
Parish Law.

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Parish Law :

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G U I D E

T O

Justices of the Peace, Ministers, Churchwardens,
Overseers of the Poor, Constables, Surveyors of
the Highways, Vestry-Clerks, and all Others con-
cern'd in **Parish Business** :

T O G E T H E R

With correct Forms of Warrants, Commitments,
Indictments, Presentments, Convictions, &c.

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A Choice Collection of **Precedents** for Justices of the
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With a New and Correct T A B L E.

By JOSEPH SHAW, *Esq*;

The **Tenth Edition**, in which the Acts of Parliament
are continued to the present Time; particularly those
relating to Carriages, Highways, and the Militia.

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Particulars of the

OF A

GUIDE

TO

Justices of the Peace, Ministers, Churchwardens,
Overseers of the Poor, Constables, Surveyors of
the Highways, Vestry-Clerks, and all Others con-
cerned in Parish Affairs;

FOR

MUSEVM
BRITANNICVM

With correct Forme of the
Instruments, &c.

A Choice Collection of Manuscripts for the Use of the
Peace, &c.

By J. H. & C. Shaw.

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To the Honourable

Sir John Fortescue Aland, K^t.

One of the Justices of His MAJESTY's
Court of *Common Pleas.*

S I R,

THIS Treatise is laid at
your Feet as a small,
but publick Acknowledg-
ment of the many Obliga-
tions you have been pleas-
ed

DEDICATION.

ed to confer upon me. It is not from the Vanity of Thinking, it can either contribute to your Instruction, or merit your Approbation. I know both you and myself too well ever to give into such Presumption; for who can write so well as you can judge? Few, if any, ever shone brighter in the Seat in which GOD and the King have so justly placed you; nor is it my single Opinion, since one of the most learned Bodies in *Europe*, by their late Diploma, have publickly confirmed my Sentiments. Not only the eminent Charges of the Kingdom which you have

DEDICATION.

have passed through, and the Figure you have made in them, intitles you to the just Esteem and Admiration of wise and good Men; but also the Social and Christian Virtues which you possess, and which you so carefully conceal from the Eyes of all the World, except from those who have the Honour and Happiness of attending near your Person, and who consequently have, as well as myself, an Opportunity of daily observing them, which I should here have taken an Occasion of particularizing, did I not know that by such a Publication I should as much offend

A 2

your

DEDICATION.

your Modesty as I should
manifest the Truth; the
Fear of which obliges me
to end this Epistle, and to
subscribe myself,

Honourable Sir,

Your most humble,

Most obedient Servant,

Joseph Shaw.

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Parish Law.

CHAP. I.

Of the Original and Institution of Churches and Parishes in general.

BEING to treat of parish officers, it may not seem improper to premise a few things concerning parishes themselves.

2. A little before our blessed Saviour's ascension, he gave his apostles commission to go and teach all nations, baptizing them in the name of the Father, Son, and Holy Ghost, &c. which they immediately began, God assisting them with many signs and miracles. But we do not read in sacred writ, that at the first propagation of christianity, there were any fixed or determinate boundaries for the apostles to exercise their sacred function in; though we read in scripture, that St. Paul himself constituted *Timothy* bishop at *Ephesus*, and *Titus* at *Crete*. No churches in the beginning of christianity.

3. In like manner was there also a bishop at *Rome*, which, at that time, was the chief seat of the *Roman* empire; and the number of christians increasing, as the *Romans* had in large cities a *præfectus prætorii*, and in lesser cities a *vicarius præfecti prætorii*, it was thought proper to settle a bishop in every city, who was superintendant over the affairs of the church, not only within the walls of the city, but in the vills and district thereto belonging. In what places bishops were first settled.

4. But the number of christians still augmenting, the bishop alone was not able to sustain so great a weight; presbyters therefore were ordained to assist him; and numbers of converts being daily made, so that one church could not suffice them, it became necessary to build more, especially in the country; and one chief business of the presbyters was, by the bishop's direction, to go and officiate at those lesser churches, though they constantly resided at the head church; and all oblations, and other church dues, were paid into a common treasury, and by the

Presbyters ordained.

All church dues paid into a common treasury.

How divided.

the bishop, or the deacons by his directions divided into four parts, *viz.* one part to the maintenance of the ministry, another to the poor, another to the reparation of churches, and a fourth to the bishop himself. But this quadripartite division, the learned Mr. Selden tells us, was chiefly in the diocese of *Rome*; for by some canons of the *French*, *Spanish*, and some other churches, it was tripartite, and had other differences. Hence our cathedral churches seem to have taken their original.

Parochia and
diœcesis terms
synonymous.

5. In those days *parochia* or *parœchia* and *diœcesis* were synonymous terms, as appears both by *Eusebius* and *Epiphanius*; and this may be the reason why in some of the northern parts of *Germany*, and even in *Holland*, where I could never find there was any settled division of parishes before the reformation, the bishop claimed all the tithes throughout the whole diocese.

The beginning
of parishes.

6. But in process of time, the work growing too great for the city presbyters, who were little more than the bishop's curates, or messengers sent by him, it was thought proper by the bishops to settle distinct presbyters and priests in those other villages and towns within their dioceses, and to limit the boundaries thereof, which were called parishes.

No parish in
England for the
first 500 Years
after Christ.

7. But here in *England*, for the first 500 years after Christ, there were no particular parishes, the bishop having the government of the whole diocese, and the revenue being paid into his treasury, as aforesaid. But when christianity began to spread, by conversion of the *Saxons* from idolatry, many churches were built by bishops, and some by laymen; but the bishops always settled the endowment, (which was sometimes done by reserving a certain portion of the profits which before were paid into the treasury of his diocese) and annexed it to those churches, for the maintenance of the priests who officiated therein; which portion thus reserved, was to arise within certain limits set out likewise by the bishop himself for that purpose; and this was done at the dedication of the church to some saint.

The beginning
of patronage.

8. But when a church was built by a layman, for the convenience of himself and his tenants, and by the bishop's appointment had a minister settled among them, no church could be legally consecrated without the allotment of a manse, or house and glebe, generally made by the lord of the manor, who thereby became patron of the church. For

Patronum faciunt Dos, Ædificatio, Fundus.

Other persons, at the time of dedication, often contributed small portions of ground; which is the reason why, in many parishes, the glebe is not only distant from the manor, but lies in remote divided parcels.

9. The lords of manors, at their first building of churches, did often allot no more than one third part of tithes for an exhibition to the parish priest, and kept the other two parts in their own hands, for the uses of the church and poor; till by degrees they

they either gave in the two other parts to the parochial priest, or else, with the bishop's consent, assigned them to some religious house.

10. And by the laws of king *Edgar*, made about 670, if a thane or lord should have within his own fee a church with a burial place, *i. e.* a parish church, he must give the third part of his tithe to it. But if it had no privilege of burial, *i. e.* if it were only a chapel of ease, depending on a mother church, then the lord was to maintain the priest out of his nine parts.

11. As to the first institution of parishes here in *England*, Parishes when many of our writers have ascribed it to *Honorius* archbishop of said to be first instituted in England. *Canterbury*, *An.* 622, or as others say, 636, in the reign of king *Edwyn*.

12. This is asserted by archbishop *Parker*, Mr. *Camden*, and by bishop *Godwyn*, who wrote the life of the said *Honorius*; and to this opinion, that learned antiquary Sir *Henry Spelman* seems to lean; though he confesses that very few authors take notice of those small parishes in those ages, for the whole diocese was then comprehended by the word *parochia*. But Mr. *Selden* affirms, that there were no parochial churches here in St. *Augustine's* time, nor for above one hundred years afterwards, which was long after *Honorius's* death.

13. But bishop *Kennet*, in his *Parochial Antiquities*, p. 586. seems to have set this matter in the justest and truest light, where he tells us, that Mr. *Selden* seems rightly to understand the expression, (*provinciam suam in parochias divisit*) of dividing his province into new dioceses; and this sense is justified by the author of *The Defence of Pluralities*. The like distinction of parishes which now obtains, says he, could never be the model of *Honorius*, nor the work of any one age. Some rural churches there were, and some limits prescribed for the rights and profits of them. But the reduction of the whole country into the same formal limitations, as it could not well be done at once, so was it gradually advanced, being the result of many generations. However, at the first foundation of parochial churches, (owing sometimes to the sole piety of the bishop, but generally to the lord of the manor) they were but few, and consequently at a great distance; so, as the number of parishes depending on that of churches, the parochial bounds were at first much larger, and by degrees contracted; for as the country grew more populous, and the people were more devout, several other churches were founded within the extent of the former; and then a new parochial circuit was allotted, in proportion to the new church, and the manor or estate of the founder of it. Thus certainly, says he, began the increase of parishes, when one too large and diffuse for the resort of all the inhabitants to one church, was, by the addition of some one, or more, new churches, cantoned into more limited divisions. And of this we have seen many notable

Parishes in England not instituted first by *Honorius*.

How they first began.

instances in our days; the prodigious increase of buildings in and about *London* and *Westminster*, having occasioned an act of parliament for building fifty new churches, most of which are already finished.

No church to be built, or endowed, without the bishop's consent.

14. From all which it is pretty certain, that in those days churches were built within the precincts of some larger parishes, and that the limits of such parishes were always appointed by the bishop, who, though he might be guided in settling the boundaries by the extent of the founder's lands, (when the church was built by a layman) yet it could not be settled without the bishop's consent; and that, together with some lay patrons engrossing to themselves the tithes, and other church dues, under pretence of having built the church, was the reason a canon was made for the consecration of new built churches by the bishop himself, because none should be built without his privy.

In chapels curates were maintained by the lord of the manor.

15. If the bishop gave the new church a right of burial, in such case the lord of the manor might (with his approbation and not otherwise) give some part of the tithes to that church, which before were due to the mother church; but if the bishop would not allow the new built church such a right, then it remained a chapel. And if the lord of that manor would have a curate there, he was to maintain him at his own charge, and he was to have no part of the tithes, for they were due to the mother church; and the general doctrine of this section appears to have been the opinion of the court, upon a question, Whether the inhabitants of a chapelry ought to contribute to the repairs of the mother church? It was held, that a chapelry may prescribe to be exempt from it, where it buries and christens within itself, and has never contributed to the repairs of the mother church: But the case before the court was otherwise; it being a later erection, they on the consecration of their burial-ground, undertook to contribute, &c. 1 *Salk.* 164. *Ball ver. Cross, Trin.* 1 *W. & M.*

To this day tithes are paid by the new church to the old in some places.

16. 'Tis true, many of those districts, within which new churches were built, did afterwards become parishes, but even at this day the right of the mother church is still preserved in several places; I mean in respect to the tithes, two parts whereof arising out of the lands of the new parish, are still paid to the old church standing in the first division of parishes; and that is where the bishop did not think fit to allow any more than the third part to the new erected church.

Law cases concerning parishes.

17. And hence it is, that when it is a question, Whether it be a parish church, or only a chapel? It shall be decided by the bishop's certificate.

18. If the bounds of a parish come in question in the spiritual court between a parson and vicar, tho' the parson is an impropriator, yet it shall be tried in the spiritual court, and no prohibition shall go. As for instance; If there is a vill in the parish, and

and the vicar hath the tithes of the vill, and the impropriator hath the tithes of the rest of the parish, and the question between them is, Whether the lands out of which the vicar claims tithes are in the parish or vill? This shall be tried in that court: The reason may be, because the contest is between spiritual persons, and the right of tithes is only in question. But this would not pass in a parallel case between a clergyman and a layman, where a vicar sued for tithes, and the defendant suggested a *modus* payable to the parson; and here the contest was between the vicar and parson, who are both spiritual persons, and yet a prohibition was granted. 2 Ro. Ab. 312. p. 7. 1 Sid. 312. 2 Keb. 215.

19. So if there are two vills in a parish, and a question arises concerning the boundaries of those vills, it shall be tried in the spiritual court; but the law is not the same where the question is concerning the boundaries of a parish between a clergyman and a layman: For if a suit is brought for tithes arising *infra loca decimabilia* of such a parish, and the defendant suggests, that the lands are in another parish, and that he had paid tithes to the parson there, this shall be tried at law; and the reason is, because the inheritance of the land out of which the tithes arise, may come in question. Cro. Eliz. 178, 228. 1 Leon. 129, 130. 2 Roll. Abr. 282, E. 1, 2, 3. 1 Lew. 78. 1 Sid. 89. 1 Keb. 369.

20. So where there is a presentment *ex officio*, against a man for not coming to his parish church, and he pleads that it was not his parish church, and that he frequented another, a prohibition shall go. 13 Rep. 17. And the same point was resolved Trin. 3 Ann. in the case of *Britton* versus *Standish*, Salk. 166. 6 Mod. 188, 189. 3 Salk. 88, 89. with this, that if the person be a professed churchman, and his conscience permits him sometimes to go to the dissenting meetings on a Sunday, the toleration act will not excuse him for not coming to church; for the act was not made for people of this sort.

21. It hath been a question, What shall be reputed a parish, within the statute of 43 Eliz. c. 2. for relief of the poor? As for instance; *Hincly* was an ancient rectory, and had an ancient church; *Stoke* was an ancient village, and parcel of the rectory of *Hincly*; but it appeared, that from the time of king *Henry VI.* there had been a church likewise at *Stoke*, and that it was reputed as a parish, and that the inhabitants thereof had all parochial rights, and churchwardens; and this made it a parish. Cro. Car. 92. Hutt. 93. Litt. 73. So where the village of *Totteridge* was anciently parcel of the parish of *Hatfield*, and the tithes there arising were paid to the parson of *Hatfield*, who always found a curate at *Totteridge*; but at the time of making the statute, *Totteridge* was a parish in reputation, and had churchwardens and overseers of the poor, and had made rates, which were collected and levied by their own officers. It had like-

wife all parochial rights, and never contributed either to the poor of *Hatfield*, or the repairs of that church, or joined with them in any assessment. This made it a parish distinct from *Hatfield*. *Cro. Car.* 394. 1 *Jones* 355. 2 *Ro. Ab.* 560, p. 1. But making rates alone, without having other parochial rights, will not make it a parish, though there was a chapel there before the making the statute, and though divine service was read there at that time. 4 *Mod.* 157.

Annual perambulation.

22. The boundaries of parishes being now settled by custom, care is and ought to be taken, to preserve them by annual perambulations, which should be kept up at the usual time, and the boundaries of the parishes so carefully viewed and settled in them, as to leave no room for any doubt or contest about them.

23. In the times of popery these perambulations were performed in the nature of processions, with banners, hand-bells, lights, staying at crosses, &c. and therefore, though such processions were forbidden by the injunctions of queen *Elizabeth*, yet by the same injunctions, the useful and innocent parts of perambulations were, and are still retained.

24. In some of these perambulations the people have demanded refreshments, as of right, and alledged a custom for it; as the churchwardens of *Uffington* in *Berkshire*, *An'* 13 *Jac.* I. demanded something to eat and drink of a person who lived in a particular house in that parish, alledging, that those who lived in that house always allowed it; and being denied it, a suit was brought in the spiritual court to recover it; but it was held to be an unreasonable custom. *Moor* 916. The like custom was alledged, that all farmers of a farm called *Longton*, had used to find cakes and ale at a perambulation, to the value of eight shillings; but this being a prescription in farmers, 'tis not good to charge the land; it ought to have been in owners: and it would have been difficult to support it against the owner; for, it is easier to imagine that it began by generosity and whim, than by any reasonable consideration paid for it.

Three sorts of churches.

25. Churches are commonly divided into *cathedral*; *collegiate*, or *conventual*; and *parochial*. 1. *Cathedral churches* take their name from *cathedra*, a chair, the bishop's chair or see being there placed; and of which church the bishop is incumbent, and to which the whole diocese belongs. Of these churches something hath been already said. 2. *Collegiate churches* are those which being built in towns at some distance from the cathedrals, and not large enough to be made bishopricks, the bishop settled a competent number of presbyters there; these churches not long after were called collegiate churches, and were liberally endowed by the great and pious men of those times. Like unto these, were those called conventual churches, which, in time past, belonged to some convent, abbey, or priory, &c. but of these, there being but few left since the reformation, and

no parishes properly belonging to them, I shall add no more about them. 3. But shall proceed to treat of *parochial* churches, to which parishes are annexed, or rather of parishes themselves. And thus much of the original and institution of churches and parishes in general: I shall only add, that they are computed to be in all *England* and *Wales* about 9284 parishes, whereof about 3845 are impropriated.

26. It will be of use to the reader to observe in this place, Tithes when that of ancient time, before a new constitution made by the pope, *Ann. Dom.* 1200. the patron of a church might grant his tithes to another parish: But in or about that year, pope *Innocent III.* in a decretal epistle directed to the archbishop of *Canterbury*, *That just tithes may be paid to parish churches*, writes to this effect. *We have heard that many in your diocese do not pay their whole tithes, or two parts of them, to the churches in the parishes where they live, or have their estates or possessions, and from which they receive the sacraments of the church, but distribute them to others at their pleasure. Whereas therefore it seems inconvenient and unreasonable, that the churches which sow spiritual things, ought not to reap temporal things from their parishioners: We indulge your brotherhood by the authority of these presents, that it may be lawful to you, in such case, to ordain what shall be canonical, and to cause by ecclesiastical censures, what you shall decree to be firmly observed; any contradiction or appeal of any person, or custom hitherto observed to the contrary notwithstanding.* 2 Instit. 641.
2 Co. 44.

27. Lord Coke observes rightly, that this decretal bound not the subjects of this realm (*i. e.* formally;) but the same being just and reasonable, they allowed it by a tacit consent; and so it became part of the law of the land. Notwithstanding which, there are several instances of prescriptions which have since been insisted on and allowed, and which can only be justified by supposing them to have commenced when the laity enjoyed the ancient latitude above mentioned of distributing their tithes at pleasure; of which more hereafter.

CHAP. II.

Of Incumbents, Institution, &c. and Lapse.

1. **F**ROM what hath been said, a parish, collectively taken, may be defined to be a body of people living within a certain district, to which belongs a parish church, with a right of burial, and of having the holy sacraments duly administered there, with a right of tithes, and other church dues, and of making pa-
Parish defined.

parish rates, and choosing their own parish officers, &c. which officers, with the incumbent, by order of the vestry, have the direction and management of all the parish affairs and business.

Of incumbents.

2. Of all which officers we shall treat in their order, and shall begin with those whose attendance is more immediately required in or about the church; among which, the chief is the *incumbent* or *minister*.

Incumbent who.

3. An INCUMBENT is properly a clerk who is resident on his benefice, and is so called, because he doth or ought to bend all his study to the discharge of the cure of the church to which he belongs, and may be considered under a threefold denomination.

1. RECTOR. 2. VICAR. 3. CURATE. To which may be added, in some parishes especially in and about London, LECTURERS and READERS; of all which we shall treat hereafter in due order. But first, it may be expedient to shew what *qualifications* are required in an incumbent; and by what means his *title* to his benefice accrues, and is to be established.

Qualifications
required in in-
cumbents.

4. As to the *qualifications* of incumbents, by statute 14 Car. 2. c. 4. neither layman nor deacon is capable of being admitted into any parsonage, vicarage, benefice, or other ecclesiastical promotion or dignity whatsoever, but must obtain the orders of a priest to qualify him for the same. And this law holds in the case of donatives, and his ordination must be episcopal. But the same proof shall be allowed to prove orders, as to prove a marriage, *viz.* constant reputation, &c. and if he were *Laicus*, the admission, institution, and induction, were not void, but voidable; and the plenary remains until deprivation. *Comb.* 202. *Dr. Harcourt's case*, 5 W. & M. in B. R.

5. The most usual way of *taking a TITLE* to a church is by the presentation of the patron, that is, his nomination of his clerk to the bishop or ordinary for the time, to be by him admitted and instituted into the church or benefice that is void. When the gift of the living is in the ordinary, he is said to *colate*, and then there is no presentation.

Presentations.
The forms.

6. A presentation to the archbishop of Canterbury.

7. *To the most reverend lord and father in Christ, the lord A. by the divine permission archbishop of Canterbury, primate and metropolitan of all England, or in his absence to his vicar general in spiritual things; or to any other person, having sufficient authority in this part, &c. as in the next section; if it be to the archbishop of York, the word all must be omitted; if to any other bishop, it runs thus.*

8. *To the reverend lord and father in Christ, the lord B. by the divine permission bishop of L. or in his absence to his vicar general in spiritual things, or to any other person having sufficient authority in this part,* Sir H. J. baronet, the true and undoubted patron of the rectory of the parish church of D. health everlasting in the lord,*

* Or on this
behalf. Lat. in
in hac parte.

lord. To the parish church of D. aforesaid, of your diocese, now vacant by the natural death † of P. T. the last incumbent there, and belonging to my presentation by full right, I do present to your fatherhood ‡, my beloved in Christ A. B. professor of divinity, humbly intreating you, that you will vouchsafe with favour to admit the said A. B. to the said church, and cause him to be instituted and inducted into the rectory of the said church, with all its rights and appurtenances, and to do and fulfil on his behalf, all and singular the other things which shall appear to belong to your episcopal office. In witness whereof, &c.

† Or resignation, &c. as the case may be.

‡ Or paternity. Lat. paternitas.

* The word humbly is usually omitted when a peer presents.

9. It is said the presentation may be by parol only, in the case of a private person. In the case of a corporation aggregate, they must present under their common seal, and signing and sealing is commonly used in the other case. And if the patron be an infant of never so tender age, as a year or a month old, the presentation must be by himself, and not by his guardian; for, the guardian cannot account for it: And this was so held by lord King, lord chancellor, about the 5th of George II. And it seems that a presentation to benefices above the value of ten pounds in the king's books is necessary to be in writing, since the statutes which have imposed two stamp duties of forty shillings each on such presentation.

How to be made.

10. After the clerk is examined, he is to subscribe the 39 articles in the presence of the ordinary, before he be admitted; and also so much of a declaration provided by stat. 14 Car. 2. 4. as is not taken away by subsequent statutes; and is in these words. *I A. B. will conform to the liturgy of the church of England, as it is now by law established.* And of this the bishop is to make a certificate.

11. Admission is nothing more than the declaration of the ordinary, that he approves of the clerk as a fit person to serve the cure of the church, to which he is presented. *Co. Lit. 344.*

Admission.

12. Institution is that act by which the ordinary commits to the clerk the cure of the church, to which he is presented. And the ordinary usually makes letters testimonial of it afterwards, though they are not necessary. Note; though the bishop be not resident within his diocese, he may admit and institute notwithstanding; his jurisdiction in this respect accompanying his person.

Institution.

Co. Lit. 344.

13. Next follows induction, which is the putting the clerk in possession of the church, and by this act he is made a complete incumbent. In this case, the ordinary makes a mandate to him whose duty it is to induct, (which is ordinarily the archdeacon) or he may direct it to such other clergymen as he pleases. And note, there is a great variety of peculiar jurisdictions for this purpose, of which the clerk is to inform himself where his lot falls, or else his induction may be avoided. The archdeacon

Induction.

does

does not usually induct in person, but sends a mandate to the rectors, vicars, &c. of the archdeaconry.

Plenary.

14. By admission and institution without induction, the church is full against all persons but the king, having the right of presenting fully in him; and the clerk is enabled and obliged to attend the cure of souls there; and he may enter into the glebe, and take the tithes before induction, against any stranger, and yet he is not seised of the temporalities so as to be able to grant or sue for them.

Co. Lit. 314.

Further qualifications, &c.

15. Within two months after he shall be in actual possession of the benefice, he shall in that church, chapel, or place of public worship belonging to the benefice, (without some lawful impediment, to be allowed and approved by the ordinary, hindered) and within one month after such impediment removed, upon some Lord's day, openly, publicly, and solemnly read the morning and evening prayers, appointed to be read, by and according to the book of common prayer, at the times thereby appointed; and after such reading shall openly and publicly, before the congregation there assembled, declare his unfeigned assent and consent unto all things therein contained and prescribed, according to this form of words and no other; *I A. B. do, &c.* See stat. 13 & 14 Car. 2. c. 4. it is printed and bound with all the folio common prayer books; and see, for a certificate and declaration, which he is also to read within three months, stat. 14 Car. 2. c. 4. and above, §. 10. But by the stat. 23 G. 2. c. 28. It is enacted, that the allowance and approbation of such lawful impediment shall extend to the not reading the said certificate and declaration, although the same be not mentioned in the said allowance and approbation, for the like time as the said allowance and approbation shall extend to.

Stat. 13 Eliz.
c. 21.

3 Cro. 252.
1 Sid. 163.
1 Leo. 101.
1 Keb. 502, 590.

To read the
articles.

16. He is also, within two months after induction, publicly to read the 39 articles of religion in the church where he has cure, in the time of common prayer there, with declaration of his unfeigned assent thereto, on pain of deprivation *ipso facto*. These two months have but 28 days to the month, being construed according to common law. And this declaration of unfeigned assent must be absolute; for if he adds any hypothetical, restrictive, or qualifying words, his declaration is insufficient in law. Reading the 39 articles in the church porch is sufficient, divine service being read there also, the key of the church being withheld from him. It is the safest way to read the articles, declaration, &c. after prayers are begun, and before they be ended. By the stat. 23 G. 2. c. 28. every person who has already read or shall hereafter read the said articles, and has made or shall make the said declaration at the same time that he did or shall read the morning and evening prayer, and declare his unfeigned assent and consent to the use of all things therein contained and prescribed, according to the said stat. 13

14 *Car.* 2. shall be adjudged to have complied with the true intent and meaning of said stat. of 13 *Eliz.* although the same were not or may not be read within two months after induction.

17. It is a prudent caution for the clerk to have some intelligent persons whom he can rely on, present when he is inducted, and who understand the *Greek* language, because of the words (*Φορνησα σαρκος*) in one of the 39 articles; and it will be convenient that the same persons be present when he performs the other matters required by law to be performed in his parish church, and to observe that he reads the prayers, &c. and he may give them copies of the bishop's certificate, and of the declaration which he is to read; and provide for them a book, containing the 39 articles; that they may take notice of his reading them truly; and then that they set their hands to the book of articles, and that he did read a true copy.——I shall not enlarge on this caution to clergymen, because it is held, that if a person will aver, that a clergyman did not read, &c. the negative in this case must be proved, because the penalty for the omission is so great, *viz.* his loss of the living. And yet it is not amiss that the clerk have it in his power to prove the affirmative. *Nimia cautela non nocet.*

18. Every person promoted to any ecclesiastical office, benefice, &c. before he shall take upon him to receive, use, exercise, supply, or occupy any such promotion, &c. shall make, take, and receive the oath (*appointed by stat. 1 W. & M. §. 1. c. 8.*) Take the oaths. to be taken instead of the oaths of supremacy and allegiance, before such persons as have authority to admit such person to such office, &c. or else before such person or persons as by commission under the great seal of *England* shall be appointed to administer such oaths. And if any such person so promoted, peremptorily and obstinately refuses to take the same oaths so to him to be offered, he shall presently be adjudged disabled in the law to receive, take, or have the same promotion, &c. to all intents, constructions, and purposes. *Note;* The new oaths are appointed to be taken by such persons, in such manner, at such times, before such persons, in such courts or places, as the abrogated oaths ought to have been taken; and under the same penalties, forfeitures and disabilities, for neglect or refusal. But see the following directions by the statutes of king *George I.* and king *George II.*

19. The new oaths are these. *I A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king George II. So help me God.*

20. *I A. B. do swear, that I do from my heart abhor, detest and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whomsoever. And I do declare, that*

no foreign prince, person, prelate, state or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical, or spiritual within this realm. So help me God.

21. By stat. 1 Geo. 1. sess. 2. c. 13. he is also to take and subscribe the above oath and the abjuration oath, which being of considerable length, we shall not swell this work with it; the rather because the officers have it ready at hand in all the proper courts. And by stat. 2 Geo. 2. c. 31. this is to be done in one of the four great courts at *Westminster*, at any time before the end of the next term after he shall be admitted into or enter upon such benefice, &c. or shall take and subscribe the said oaths as aforesaid, at any time before the end of the next quarter-sessions of the county, city or place, where such person shall be or reside after he shall be admitted into, or enter upon any such benefice, &c. Persons beyond the seas are to perform this within four months after their arrival in *England*.

Incapacity, &c.

22. Persons who neglect or refuse to take and subscribe the oaths, as by the statutes in the 20th section, shall be *ipso facto* judged incapable and disabled in law to all intents and purposes whatsoever, to have, occupy, or enjoy such office, &c. or any profits appertaining thereto, and such office, &c. shall be void. And if such person be convicted of exercising such office, &c. after such neglect or refusal, upon any information, presentment or indictment, in any of the king's courts at *Westminster*, or at the assizes, he shall be disabled from thenceforth to sue or use any action, bill, plaint, or information in any court of law, or to prosecute any suit in any court of equity, or to be a guardian of any child, or executor, or administrator of any person, or capable of any legacy, or deed of gift, or to be in any office in *Great Britain*, or to vote at any election for members of parliament, and shall forfeit five hundred pounds, to be recovered by any action, &c. at *Westminster*.

23. The said courts must administer these oaths to persons who tender themselves, and the proper officer is to have two shillings and no more from each person. The course at *Westminster* is, that none, except persons of high quality, trouble the Chancery on this occasion: The other three courts have appointed two swearing days each, in every week, and in each court they swear all that come, the first and last days of term. The swearing days are as follow: Monday and Thursday the *King's Bench*; Tuesday and Friday the *Common Pleas*; and Wednesday and Saturday the *Exchequer*. 'Twas thought good to mention these things, because it is indecent for persons of an ordinary degree to trouble the great courts, except in their courses, which in one or other of them every day of the term affords, except holidays.

24. In

24. In order to take a benefice of the greater value, it is fit Capacity to take
to remember the stat. 13 *Eliz. c. 12.* which provides, that none good benefice.
shall be admitted to any benefice with cure of souls of the value
of thirty pounds in the king's books, unless he be a bachelor of
divinity at least, or a preacher licensed by some bishop, or one
of the universities of this kingdom; and if not so qualified, his
institution is to be void.

25. A performance of all these requisites, *viz.* reading, oaths,
&c. upon taking one living, will not suffice for taking another,
but must be repeated.

26. A lapse is when the ordinary, the metropolitan, or the Lapse.
king, acquire a right to collate or present to a church, at first by
the neglect of the patron to present to it within six months after
avoidance: 2dly, The bishop neglecting, it devolves to the arch-
bishop; and on the like neglect in him, to the king. This time
is computed by the kalendar, according to the ecclesiastical com-
putation; and not at 28 days to each month, as in cases at the
common law: and the day in which the church becomes void,
is not reckoned for one.

27. The patron must take notice, on peril of a lapse, of the Who to take no-
church being void by death, creation, or cession; but if by re- tice of it.
ignation, or deprivation by canon law, he must have notice
from the ordinary, and the six months are computed from such
notice. If the avoidance is caused by a temporal crime, as trea-
son, &c. or by an act of parliament, the patron is to take notice
of his peril; unless such act provides that he shall have notice,
as is done in the statutes following, *viz.* 13 *Eliz. c. 12.* Stat.
1 *Eliz. c. 6.* Stat. 13 & 14 *Car. 2. c. 4.*

28. If a patron presents his clerk before the bishop has colla-
ted, though the six months are expired, the lapse is cured, and
the presentation is good. When a *quare impedit* is depending, a
lapse may incur, if the bishop was not named in the writ, there-
fore the practice is to make him a party. A lapse may incur
against an infant or feme covert; and, Note, as is said before,
an infant of what tender age soever, signs his presentation
person, and not by guardian. There are many other rules
concerning this doctrine, which would be too prolix for this
treatise to contain. Readers who have particular nicety in their
cases, are to read books wrote expressly on this subject; or (which
is much safer) take the assistance of learned counsel.

29. It may be proper to add some cases of advowsons in mort- Cases of advow-
gage. A. being seised in fee of lands, and of an advowson in sons in mort-
gagage, by lease and release conveyed the lands to trustees in fee, gagage.
to raise a sum for brothers and sisters; and afterwards by lease
and release (bearing date before the former, but executed after)
conveys the same lands, and by indenture conveys the advowson
to serjeant Selby, and his heirs. Afterwards A. grants the next
avoidance to B. and dies, and C. his heir brings his bill against
Selby

Selby to be let into a redemption; *Selby* insisted that he was an absolute purchaser; but upon hearing, declared that he was only a mortgagee, and that *C.* should stand in the place of *A.* and be admitted to redeem, &c. afterwards *D.* article for the purchase of the lands and advowson, but the account was not then settled by the master; the church becomes void; *B.* presents, *Selby* also presents, and *D.* presents. Decreed that *Selby* the mortgagee is only a trustee, a trustee for the mortgagor, and for his representative, and for his grantee: *Selby* shall present such person as *B.* shall name. *Gally v. Serjeant Selby in Can. Comyns 343, &c.*

30. The defendant was a mortgagee, and in possession; the plaintiff brought a bill to redeem, and had a decree accordingly, before the account taken, the church became void, and the mortgagee presented. Upon the plaintiff's petition, the chancellor ordered that he should revoke his presentation, and present such a person as the mortgagor, or his vendee, (for he had contracted to sell) should appoint: The reporter adds, 2. how this revocation is to be; for I think a common person can only *variare presentando*, but not revoke his presentation, though the king may. *Prec. in Ch. 71. 2 Vern. 401. Jory v. Cox.*

31. The defendant having mortgaged the manor of *Thundersley*, to which an advowson was appendant, to the plaintiff, who brought the bill to foreclose, the church became void; the defendant moved the court for an injunction to stay the proceedings in a *quare impedit* brought by the plaintiff. *Per Cur'*: Although the defendant *Dawling* hath no bill, yet being ready, and offering to pay the principal, interest and costs, if the plaintiff will not accept his money, interest shall cease, and an injunction to stay proceedings in the *quare impedit*; for the mortgagee can make no profit by presenting to the church, nor can account for any value in respect thereof, to sink or lessen his debt, and the mortgagee therefore in that case, until a foreclosure, is but in the nature of a trustee for the mortgagor; and the like order was made between *Jory* and *Cox*, where the defendant had an injunction against the plaintiff to stay his presenting to a church, that became vacant pending the suit. *2 Vern. 401. Eq. Ab. 329. p. 8. Amburst v. Dawling.*

32. *Samuel Gardiner* the plaintiff's father, being possessed of a long term for 99 years of the advowson of *Eckington*, made a mortgage thereof to the defendant by way of assignment of the term, upon condition to be void upon payment of the mortgage money and interest at the end of the year, and there was a covenant in the mortgage deed, that on every avoidance of the church the mortgagee should present: Several years after the mortgagor died. It was admitted by the lord chancellor and by the counsel on both sides, that if there be a mortgage made of a manor, and an advowson appendant, before the mortgage is foreclosed (though the mortgagee be in possession) yet the mortgagor

agor shall present if the church becomes void, for the presentation is to be presumed to yield no profit, and consequently cannot be accounted for, nor go towards satisfaction of the mortgage; but the principal case was said to differ, nothing being mortgaged here but the advowson, so that the mortgagee could have no other satisfaction than by providing for a child, relation or friend, on the advowson's becoming void, and the rather for that it was the express agreement in the mortgage deed, that as often as the church should become void, the mortgagee should present, which express agreement would be good even in case of a mortgage of a manor with an advowson appendant; and this was still stronger, as it was the case of a perishing term, where every presentee or incumbent would have an estate for life in the church; to which the court, though it gave no opinion, yet seemed to incline. But it appearing, that this bill against the mortgagee and his presentee was brought seven months after institution, *lord chancellor* dismissed the bill, declaring that as a *quare impedit* was confined to the six months after the death of the last incumbent, so the bill seeking to compel the defendant to resign, and consequently to deprive him of his living, ought by the same reason to be limited to the same time; and the relieving against this would be to relieve against an act of parliament which had punctually been observed for some hundreds of years, ever since the 13th of *Edward I.* and that the *tempus semestre* ought to be as much observed here as at law, in regard it tended to the peace of the church. Indeed, had a *quare impedit* been brought within the six months, and the bill been preferred after six months, the court might, on a proper case, give directions in aid of the *quare impedit*, that the mortgage should not be given in evidence, &c. but here there was no *quare impedit* brought, and the bill came out of time; wherefore, *Per Cur'*: Dismiss the bill as to that part which seeks to compel the defendant to resign his living, but let the plaintiff redeem the mortgage on payment of principal, interest and costs. 2 Wms. 404, 405, *Gardiner v. Griffith*.

C H A P. III.

Of Rectors.

A RECTOR, so called, *quasi gubernator ecclesie*, of old times, was the parson of a parish where there was no vicarage endowed, and as such was intitled, *pleno jure*, to all the glebe,

glebe, tithes both great and small, and all other church dues arising or growing due within his parish.

Who a rector.

2. But latterly, since appropriations began, is taken for the parson of a parish where there is a vicarage endowed; in which case, he is generally intitled only to the great, and the vicar to the small tithes, and other church dues arising and growing due within the parish.

3. This distinction at first took place when patrons appropriated their tithes to monasteries, by which means the monks took the tithes, and sent out some of their convent to officiate the cure without any, or at most, a very small settled maintenance; by which means, the cure being but poorly served, the bishop took care that the rector's place should be supplied by one of the secular clergy, to whom the rector, or the convent, should allow some portion of the small tithes for his maintenance; and this was called a vicar.

The original of
fine-cures.

4. And sometimes the rector, with proper consent, had power to intitle a vicar in his church to officiate under him, and this was often done; by which means two persons were instituted to the same church, and both to the cure of souls, and both did actually officiate. But now the rectors, where there are vicars also, having been long excused from residence, are, in common opinion discharged from the cure of souls; and this is the original of *fine-cures*.

Parishioners may
prescribe to chuse
the vicar.

5. And hence it is, that when the rector did endow the vicarage, the advowson of common right is appendant to the rectory; but parishioners may prescribe for the choice of a vicar, and an advowson may be appendant to a manor.

6. And as these *fine-cures* are presentable, so they must be resigned to the ordinary, and when such *fine-cures* are donative, as some of them are, they may be more properly called *fine-cures*, than when the incumbent comes in by an institution.

7. The same church had sometimes a rectory and vicarage separate and distinctly endowed.

8. And though properly a rectory or parsonage doth consist of glebe land, and tithes, with the offerings, yet it may be a rectory, though it have no glebe but the church and churchyard; and in some places, as in *London*, and other great towns and cities, there may be neither glebe nor tithes, but annual payments and offerings in lieu thereof; and by the grant of a rectory, all the glebe, tithes and offerings will pass.

9. If a rector demise his rectory for years, the tithes will pass inclusive, although the lease be by parol only; but if he lease out his tithes alone, they will not pass unless the lease be by deed or writing. *Trin. 26 Eliz. Whitby and Saunders's case.*

10. But the rector may demise his tithes to the owner of the land for one year by words only, as it was agreed by all the judges in *B. R. Mich. 2 Car. 1. Rol. 179. in Bellamy and Bapthorp's*

Baptorp's case. Noy 89. Latch. 176, 184. Godb. 373. But he cannot demise them to a stranger but it must be by deed. And thus much of rectors; we shall next proceed to treat of vicars.

C H A P. IV.

Of Vicars.

1. **T**HE original of vicarages hath been already set forth, and though at first, perhaps, a vicar might be removable *ad nutum prioris*, yet by degrees he got a settled maintenance, which consisted in the glebe, and some small tithes.

2. A VICAR is instituted and inducted in the same manner as a rector, only with this difference, that over and above what is required of a rector, he is to take an oath of perpetual residence on his vicarage (*nisi aliter dispensatum foret ab episcopo*) and without taking such an oath, his institution is void. *Ego A. B. juro quod* The oath of a vicar. *pro residens in vicaria mea, nisi aliter dispensatum fuerit a dñe- prefano meo.*

3. At the first beginning of appropriations, there were great complaints that the monks took all the tithes to themselves, and did not endow a perpetual vicarage; whereupon an act of parliament was made 15 R. 2. c. 6. that upon every appropriation the bishop of the diocese should see that the vicar was competently endowed. Which law being of little effect, because the bishops in those days favoured the monks too much, therefore, Anno 4 H. 4. c. 12. another law was made, that in every church appropriated, one should be ordained vicar perpetual, and be canonically instituted and inducted (which the monks were not) and also competently endowed, at the discretion of the ordinary; so that what the vicar now claims, is either by endowment or prescription. But where there is no vicarage endowed, the impropriator of the small tithes is bound to maintain a priest, and upon an information by the attorney general for that purpose, the king may assign to the curate such an allowance or proportion of the small tithes as he shall think fit; but otherwise it is, where the vicar is endowed, though but of never so small a matter. 1 Vern. 247. *Bonsey v. Lee.*

4. The endowment is the original grant or agreement made by the abbot and convent, or other religious body, to or with the vicar, they having the whole benefice appropriated to them, and the *quantum* was settled by the bishop. These grants were registered in the archives of the bishop, or in the augmentation-office, but most of them are now lost; therefore if the endow-

When it shall be presumed the vicarage was endowed.

ment itself doth not appear, and if no particular proof can be made of it, yet the appropriation is not void; especially if a vicar hath, ever since that statute, been instituted and inducted into that vicarage; for in such case, it shall be presumed that the vicarage was lawfully endowed. *Cro. Jac. 252.*

Reunion to the rectory shall not be presumed by discontinuing to present.

5. And it is to be observed, that though the vicarage may be reunited to the rectory out of which it was originally taken, yet, if no vicar hath been presented for many years, that shall be no discontinuance of the vicarage, for it is the fault of the parson himself in not presenting; and therefore if a vicar should get the king's title by lapse, he shall be intitled to the endowment, though there had not been a vicar presented before him for above an hundred years. For a reunion to the rectory shall not be presumed only from such a discontinuance to present, unless something be shewn to reunite the vicarage to the rectory. *Cro. Eliz. 873.*

Vicar may claim his dues by prescription.

6. And where the vicar cannot produce the endowment, there prescription usually takes place; for if by constant usage, he hath enjoyed such a particular estate, that shall be a sufficient evidence of the endowment; and if he could produce the original itself, and should claim something which is not mentioned in it, yet if he can prove that he and his predecessors enjoyed it time out of mind, that will be a sufficient proof to support his right to it; because where there hath been a long and constant possession, it may be reasonably presumed that the vicarage hath been augmented with what the vicar claims, by the direction of the bishop himself, upon citing all persons concerned.

What tithes the vicar shall have.

7. The endowment hath no relation to the lands, but to the tithes; for if the vicar prescribes to have the small tithes, and if the land had been plowed time out of mind, so that the parson had the tithe of the corn; yet, if it is converted to any other use, and small tithes grow on that very land, the vicar shall have them. *2 Roll. Abr. 335. pl. 5. See the next section, and § 11. and ch. 12.*

What is meant by altarage.

8. It hath been held, that by the words *de decimis garbarum*, the vicar should have tithe hay, though *garba* doth now signify a sheaf of corn; but it is probable that in ancient grants *garba* might be used to signify hay, or at least that hay was bound in bundles. *2 Roll. Abr. 335. pl. 7. Cro. Eliz. 633.* So in the word altarage, the tithes of wool and lambs, and of many things are comprehended; and if the vicar hath for a long time enjoyed such tithes, he shall have them still as comprehended in that word; though perhaps this may be more by the force and power of custom, than of the word itself.

Vicar hath the freehold of the church.

9. Upon these endowments, the vicar hath as legal and lasting, tho' not so large an interest in the church as a rector, for he is *perpetuus vicarius*. The soil in the body of the church is his freehold, for it is part of his glebe; he must repair the church.

church, and for that purpose the trees in the church yard belong to him. 2 *Roll. Abr.* 337. pl. 3. 1 *Ro. Rep.* 255. But this was by virtue of the stat. 14 *Ed.* 3. c. 17. for before that act, the parson, and not the vicar, had the freehold of the glebe; he was subject to every charge of the vicarage, and if the vicar himself was impleaded for any thing concerning it, he was to have aid of the rector; he could not maintain a *juris utrum*, which he may do now by virtue of that statute, and both the parson and vicar have distinct and separate rights, and may maintain distinct actions to recover such rights.

10. 'Tis true, the vicarage did originally belong to the parsonage, for it was derived out of it; but now, by prescription, it may be appendant to a manor, because it is possible the rector might have granted it so time out of mind. But if there is no such grant, the rector is still, of common right, patron of the vicarage, though by composition it may be settled otherwise; and therefore, if he makes a lease of his parsonage, the patronage of the vicarage passes as incident to it. 2 *Roll. Abr.* 59. Z. p. 4. Who patron of the vicarage.

11. As the vicar hath the freehold of the glebe, so he may prescribe to have all the tithes in the parish, except those of corn; and by virtue of such prescription, he shall have the tithes of those new seeds, as clover grass, hops, &c. for though he cannot particularly prescribe in such cases, because they are new things, yet they are within such a general prescription, because all small tithes are thereby comprehended, and the great tithes excluded. 2 *Roll. Abr.* 334. pl. 7. And because vicarages are generally endowed with small tithes only, I shall mention what those are in the 12th chapter.

12. Here it may not be improper to mention the statute of 29 *Car.* 2. c. 8. which takes notice of letters sent by the king to the bishops immediately upon his restoration, directing them, upon the renewing of leases of rectories and tithes impropriate or appropriate, to reserve more than the ancient rent, that it might be paid to the poor vicars to augment their vicarages; which was to continue during the estate out of which it was granted, and afterwards; and that the vicars should be adjudged in the possession thereof, to them and their successors, and should have remedy to recover such rents by distress or action of debt. Such leases are to be entered in a parchment book, to be kept in the bishop's register; which being attested by the bishop himself in that book, and that the augmentation was intended for such use, shall be as a record, and a copy thereof proved by witness, shall be given in evidence. If a vicarage be not sufficient to maintain the vicar, the bishop may compel the rector to augment the same by the aforesaid statute; but if the profits of the parsonage or vicarage fall into decay, so that either of them by itself is not a sufficient maintenance for the parson or vicar, they

The statute of 29 *Car.* 2. c. 8. set forth.

Bishop may compel the rector to augment the vicarage.

ought again to be united. 2 Roll. 337. And whether vicarage or not, shall be tried in the spiritual court, by reason it could not begin, or be created but by the ordinary. 3 Salk. 378.

13. Vicar enjoyed a tithe time out of mind, which was not in his endowment, and adjudged good, and shall be intended an augmentation made by the parson. Hardres 328, 329. And endowment of vicarages have been always favoured at law; the vicars, for the most part, having the cure of souls.

Where a vicarage may be dissolved.

14. It hath been resolved, that where there is a parsonage and vicarage endowed, that the bishop, in the vacation, may dissolve the vicarage; but if the parsonage be impropriated, the bishop cannot dissolve the vicarage, for upon a dissolution, the cure must revert, which it cannot into lay lands. Parry v. Banks, Palmer 219. Cro. Jac. 518. 2 Ro. Rep. 100. And the dissolution of the vicarage may be made when the vicarage is full; such dissolution being mentioned to take place after the death of the incumbent, when the church shall be void.

CHAP. V.

Of Appropriations.

An appropriation, what.

An appropriation.

Why so called.

How an appropriation was made.

At first only to spiritual persons, afterwards to others.

1. **I**T is to be observed, that some of our books make a difference between an *appropriation* and an *impropriation*. An *appropriation*, they say, is properly so called when it is in the hands of the bishop, college, or religious house; *impropriation*, when it is in the hands of a layman.

2. Appropriation so called, because parsons not being ordinarily accounted *domini*, but *usufructuarii*, having no right of fee-simple, which is in abeiance, as the law terms it, are, by reason of their perpetuity, accounted owners of the fee-simple, and therefore called *propriarii*.

3. To make an appropriation, (after licence obtained of the king in chancery) the consent of the diocesan, patron, and incumbent was necessary, if the church was full: if void, the diocesan and the patron, upon the king's licence, might conclude it. Plowden, in Grendon's case, 496. To dissolve an appropriation, it is enough to present a clerk to the bishop, and he to institute and induct him; for that once done, the benefice returns to its former nature. Co. 7. fol. 13. Camb. Brit. 261.

4. Appropriations at first were made only to spiritual persons, such as were qualified to perform divine service; then, by degrees, they were extended to spiritual corporations, as dean and chapter, &c. and lastly, even to prioresses, upon a pretence to support

support hospitality; and lest preaching should by this means be neglected, an invention was found out to supply that defect by a vicar as aforesaid. And it hath been a question, Whether an appropriation is good, where there is no endowment of a vicarage, because the statute of 4 H. 4. c. 12. positively provides that vicarages shall be endowed. But it is now settled, that if it is a vicarage in reputation, and vicars have been instituted and inducted to the church, it shall be presumed that the vicarage was originally endowed. 2 Cro. 252, 59. *Hardres* 328.

Where it is presumed the vicarage was endowed.

5. The abbot and convent had not only the tithes of the appropriated churches, but the right of patronage too; for that was extinct as to the former patron, by the appropriation, unless he had reserved a right of presentation to himself; and that made the advowson disappropriate, and the church presentable as before, but not by the old patron, but by the abbot and convent, who were then bound upon a vacancy to present a person to the bishop. *Stil.* 201.

6. But now, by the stat. of 31 H. 8. c. 13. those appropriations which were made formerly by bishops, and enjoyed only by spiritual persons and religious houses, are become the inheritance of laymen; and though the bishop's power in such cases is not mentioned in the statute, yet the law leaves all matters of right just as they were before; for when those religious houses were surrendered, the king was to have the tithes in the same manner as the abbots had them in right of their monasteries, and there is a saving of the rights and interests of all persons; so that if before the dissolution the vicar had an antecedent right to a competent maintenance, and the bishop had power to allow it, 'tis not taken away now; and this was resolved in *Hitchcott* and *Thornbury's* case, 2 Roll. Abr. 337.

7. Bishop *Kennet* tells us, that appropriating parish churches to religious houses, or giving them in full right to the monk's absolute property and use, was an engine of oppression brought over with *William* the conqueror, when the greater prelates being *Normans*, had the spirit of trampling on the inferior clergy, who were generally *English*, and hated by them. And this practice, which crept in with *William* the conqueror, in a few reigns became the custom of the land; and the infection spread, 'till, as a sensible writer computes it, within the space of three hundred years, above a third part, and those generally the richest benefices in *England*, became appropriated. *Defence of Pluralities*, p. 113.

Appropriations brought in by the Normans. See sect. 8. and 9.

8. And the vicar enjoying a full third part of the tithes, nay, and the altarage, or portion of oblations and perquisites, and small tithes, in a manner arbitrary, being all commonly reserved to the vicar, made his portion often equal to, if not exceeding that of the convent.

9. From corporations this example went on till it came at last to the parish priests themselves, who in populous or rich places obtained a vicar to be endowed, and casting upon him the cure of souls, they had the rectory appropriated to them and their successors as a *fine cure* for ever.

A small pension to the rector upon appropriations.

10. It was upon this equity of enabling a priest to discharge the cure of souls, that most of the vicarages, where there was a rector in the first institution, did consist in the whole tithes and offerings; and the portion reserved for a rector impropriate, was but a small pension of a mark or two, or even of four shillings, or two shillings, in lieu of all other right and claim; of which moderation there are many instances upon the rolls and registers of our old sees, especially of *York* and *Lincoln*.

Afterwards the vicar had but a third part.

11. Afterwards the bishops, in their forms of ordination of vicarages, laid down for the rule of proportion, that the vicar for the time being should receive the third part of all profits arising from and pertaining to the said church. And if the smaller tithes and oblations (the common allotment to a vicar) would not amount to such a third share, then some part of the greater tithes of corn, &c. was allowed to make up such deficiency. For the bishop always had power of saving a competent portion for a vicar, to be taxed and ordered by him, in due consideration to hospitality, and other burdens; and afterwards to be moderated and augmented as should seem to the ordinary fit and proper, for indeed, what was at one time a competency, might, at another, sink into a deficiency.

Bishop had a power of settling the allowance.

How a church appropriate is disappropriated.

12. A church appropriated is disappropriated when he who is parson appropriated, being also patron of the vicarage, doth present the vicar to the parsonage. This is a reunion of the vicarage and parsonage, and the presentee shall have all the tithes, and other profits belonging to the church. The king's licence is not necessary for the dissolving a vicarage into a parsonage presentative; but into a parsonage appropriatory it is; because he thereby loses his title of *lapse*.

Since the reformation, impropriations are become meer lay fees.

13. And though it be agreed on all hands, that every ordinary hath power of obliging spiritual impropriators to assign a *congruam portionem* to the vicar, and enforce the allowance of it by sequestration, and other ecclesiastical censures; yet, since the dissolution of monasteries, that impropriations are become meer lay fees, or inheritances of a meer temporal nature, they are entirely freed from spiritual jurisdiction; and the ordinary hath no power to make augmentation of a vicarage out of any rectory which is in the hands of a lay impropriator.

C H A P. VI.

Of Curates.

1. **I**N times of popery there were many churches, the intire How curates revenue of which was appropriated, annexed, and united were first made, *mansis monachorum*, and not like other appropriations, under the tie of having perpetual vicars appointed in them, but left to be served by temporary curates belonging to their own house, and sent out as occasion required. But when such appropriations, together with the charge of providing for the cure, were transferred from spiritual societies to single lay persons, who were not capable of serving them by themselves; and who, by consequence, were obliged to nominate some particular person to the ordinary for licence to serve the cure; the curate by this means, became so far perpetual, as not to be wholly at the pleasure of the impropriator; nor removable, but by the due revocation of the licence of the ordinary. And if the patron of a donative, or curacy perpetual, do not nominate a clerk, the bishop may compel him to do it by spiritual censures; and in perpetual curacies, he may likewise sequester the profits, and appoint another to take care of the cure, till the patron shall nominate a fit and proper clerk; whether he can do so in donatives is doubted, the place being exempt from his jurisdiction; but by stat. 1 Geo. 1. c. 10. if cures augmented by the governors of queen Anne's bounty, shall remain void for six months, without any nomination of a person to serve the same, they shall lapse to the bishop, &c. according to the course of law in prebendative livings.

2. In case also of pluralities, which must necessarily imply non-residence upon one of the two benefices, 'tis requisite that in such case, (or if he is old and infirm,) the incumbent should have a curate to supply one of his cures.

3. The common usage is, that licences are granted by the chancellor, and the forty-eighth canon prohibits curates to serve Ought to take licence from the bishop, in any place, without examination and admission by the bishop of the diocese, under his hand and seal, or by the ordinary, having episcopal jurisdiction; so that the law requires the approbation of the bishop to the admission of a curate, and no incumbent ought to take one without it. 'Tis true, many licences are granted without the bishop's hand and seal, which though not void, are irregular, because expressly against the canon.

4. Now 'tis not only necessary in respect to the church, that and why, the curate should be allowed by the bishop, who 'tis presumed, will allow no other than a person of tolerable abilities to officiate

in the holy function; but 'tis convenient for the curate himself; for when he hath the approbation of the bishop, he usually appoints the salary too; and in such case, if there should be any neglect of payment, the curate hath a proper remedy in the ecclesiastical court, by a sequestration of the profits of the benefice; but if he have only a licence without the bishop's hand and seal, then if his wages should not be paid, he must bring an action at common law against the incumbent, in which there are some niceties which are not required in the other case; as first, he must prove the agreement; he must likewise prove, that he subscribed the declaration according to the act of uniformity; for 'tis expressly required by that act, that every curate shall do it, or be *ipso facto* deprived of his curate's place. These are the remedies which he hath for his salary; but before the stat. 29 Car. 2. c. 8. he had nothing to do with the tithes themselves, and therefore payment to the curate was no good discharge against the impropiator.

If incumbent dies, his successor must pay the curate.

5. If the incumbent should die after a curate is thus appointed, and the fruits of his spiritual promotion received during the time of the avoidance are not sufficient to pay the curate's stipend, then by stat. 28 Hen. 8. c. 11. the next incumbent is obliged to pay it within 14 days after his induction. I admit that such curate hath no fixed estate in his curacy, but that the bishop may remove him at pleasure, without any formal process at law, though the incumbent cannot; but this is seldom done, especially where the curates are what are called perpetual curates. See *sect. 7.*

Curate not capable of a devise by name.

6. 'Tis true, a curate is no sole corporation, and therefore cannot take any benefit of a devise to him by that name. But if an impropiator should devise a certain portion of tithes to him, and to all that shall serve the cure after him, though the curate is incapable by law of taking such a devise for the reason above mentioned, and for that he hath no succession; yet a court of equity hath decreed, that the heir of the devisor shall be seised in trust for the curate for the time being. 2 Vent. 349.

But by statute 29 Car. 2. c. 8. hath a more fixed estate than before.

7. It hath been mentioned before, that when the bishop approves the curate, he usually appoints his salary, which he might alter or increase as he saw occasion; but this must be understood to be before the statute of 29 Car. 2. c. 8. for augmenting vicarages and curacies; for since that statute, the perpetual curates have a more fixed and established right to their salaries; for many ecclesiastical persons, and others, since the reformation, have, upon renewing their leases of tithes, reserved more than the ancient rents, on purpose that the same might be applied to improve poor vicarages and curacies.

8. But because such augmented rent was not in some leases made payable to the vicars and curates themselves, therefore the statute provides, that as well when 'tis made so payable, as where

where 'tis reserved by way of increase to the lessors, but intended for the benefit of the vicar or curate, that it shall continue during the lease, and afterwards, in whose hands soever the said tithes shall be, that they shall be chargeable therewith, whether the same is reserved or not. For by that statute, these curates are declared to be in the actual possession of such augmented rents, for the use of themselves and successors, and may distrain or have an action of debt to recover the same; so that they have a right by this statute to such salary, and cannot be deprived of it at the pleasure of the bishop, though the curate is licensed *ad nostrum iuramentum beneplacitum duraturum*; therefore, like other incumbents, they must be deprived by due course of law. And accordingly, *anno 34 Car. 2.* the dean of *Lincoln* having made a lease for three lives, of the rectory of *Mansfield*, reserving a rent to himself and his successors; and the lessee having covenanted to find a curate, such as the dean should approve, and to pay him forty marks *per annum*; the curate who was nominated by the lessee, approved by the dean, and licensed by the bishop, to the curacy of the church of *Mansfield*, brought an action of debt for a year's pension, and recovered it.

Case of curate recovering his salary.

9. And now by 1 *Geo. 1. c. 10.* such churches, curacies, and chapels, which shall at any time after that act be augmented by queen Anne's bounty, are declared and established to be perpetual cures from the time of such augmentation; and the ministers duly nominated and licensed thereunto, and their successors, shall be bodies politick and corporate, and be named as in the grant of augmentation; and may take in perpetuity, to successors, lands, &c. from the governors of the bounty, and those who contribute with them: And the impropiators or patrons are not to benefit by the augmentation, and pay such ministers such pensions, &c. as they were compellable to pay before the act. And lapse shall incur in default of nomination to such cures: But if the patron shall nominate before advantage is taken of the lapse, the nomination shall be effectual, even against the crown. And the right of nomination may be granted or recovered, or the incumbency cease, as in the case of a vicarage representative.

Augmentation by queen Anne's bounty.

10. It hath been a question, Whether the executors of a curate may be sued in the spiritual court for dilapidations; some are of opinion that they cannot, because he is not properly an incumbent, for he doth not come in by institution and induction, and therefore is not to be charged himself, nor those who represent him.

Dilapidations by curates.

11. By statute 13 *Eliz. c. 20.* every person qualified to have two benefices, may demise one of them to his curate only, and not absenting himself above forty days in any one year. Every beneficed pluralist shall have his benefice supplied by a curate that is a sufficient and licensed preacher; and a resident curate may

may

may take a lease of the parsonage, which nobody else can; if he is desirous to teach school, a licence shall be granted to another; provided that he shall have no licence in country town where there is a publick school founded, and a master allowed already. *Can. 41 & 48.*

12. No curate shall be permitted to serve in any place without examination and admission of the bishop or ordinary, or remove without testimonials of the bishop of the diocese, or ordinary of the place whence they came, of their honesty, ability and conformity to the ecclesiastical laws of the church of England. *Can. 58.* And no curate can serve more than one church or chapel on one day, unless that chapel be a member of the parish church, or united thereto, or unless the said church or chapel be not able, in the judgment of the bishop or ordinary to maintain a curate.

13. By statute 12 *Ann. c. 12.* if a rector or vicar shall prefer any curate to the bishop or ordinary, to be licensed to serve the cure in his absence, the bishop having regard to the greatness of the cure, and value of the living, shall, before granting such licence, appoint under his hand and seal, a stipend not exceeding fifty pounds *per ann.* nor less than twenty pounds, to be paid at such times as he shall think fit, by the said rector or vicar.

14. Tho' it hath been formerly said, that *vicarius non habet vicarium*, yet by long practice 'tis now as allowable for a vicar to have a curate as a rector. And when the incumbent is rendered incapable of the administration of his cure, by any habitual distemper of mind, as frenzy, lunacy, &c. the ordinary may appoint a coadjutor to receive the profits, and discharge the burthens, with an obligation to be accountable to him when called upon. Coadjutors being always clergymen, might also have the spiritual part committed to them; but this was no part of the office of a coadjutor, as such, which did anciently relate to the temporalities only. *For more matter, see chap. 2.*

15. By stat. 12 *Ann. sess. 1. c. 4.* it is enacted, That any of the inhabitants of any parish in the West Riding of the county of York, wherein any chapels of ease now are, or hereafter shall be, and wherein there are large wastes, with consent of the lord of the manor wherein such waste ground lies, (and if there be above two lords of such manor, then with the consent of the major part of them) and with the consent of three parts of four of all freeholders, and others, who have any right of common therein, according to their number, and the value of their respective estates, may inclose any part of the wastes, &c. within such parish (or chapelry therein) not exceeding sixty acres, or sixth part of such common land, where the said sixth part shall not exceed sixty acres, and to settle the same in trustees, as for maintenance and support of such ministers as shall not have a settled provision of above 40 pounds *per ann.* and shall reside within

within the same parish or chapelry, and perform divine offices in the parish church or chapel therein, according to the usage of the church of *England*, and be licensed by the archbishop of *York*, or the guardian of the spiritualities (*sede vacante.*)

16. Saving unto all lords of manors, and other owners and proprietors of royalties within the said Riding, their heirs and assigns, all mines and quarries, with full power to dig, &c. for the same, &c.

17. After any such inclosure and settlement, it shall not be in the power of any trustees or minister, or any other person whatsoever, to alienate or employ any of the profits of such inclosed lands, to any other use, but only for the support and maintenance of such vicar or minister.

18. Any of the said trustees, and their heirs, from time to time, by any writing, &c. under their hands and seals, with the consent of the vicar or minister, for whose use such inclosure is made, to be testified by his being made a party, &c. may demise or lease any common or waste grounds, or any parcel or parcels thereof, that shall be inclosed by virtue of this act, for years not exceeding twenty-one, so as upon every such lease, there be reserved payable half-yearly, during the said term, as much rent as can, at the making such lease, be really gotten for the same, to or for the only use and benefit of such vicar and minister of such vicarage or chapelry, and their successors, and so as no fine, income, or other consideration be taken for the same.

19. And all leases made of such inclosures in any other manner, shall be *ipso facto* void.

20. If any action, &c. shall be prosecuted against any person, for any thing done in pursuance of this act, such person may plead the general issue, and give this act, and the special matter in evidence; and if the plaintiff shall become nonsuit, or forbear prosecution, or suffer a discontinuance, or if a verdict pass against him, or judgment upon a demurrer, then the defendant shall recover full costs.

21. This act shall be allowed, in all courts within this kingdom, as a publick act.

CHAP. VII.

Of Lecturers.

IN many parishes, especially in and about *London*, there are LECTURERS chosen by the parish in vestry assembled; and this office may be executed by one who hath no title to a benefice,

benefice, and 'tis sufficient if such a person is in deacon's orders and if he be unduly removed, a *mandamus* lies to restore him.
Case of St. John's chapel in St. Andrew's, Holbourn.

What a lecturer
is obliged to do.

2. By the canon, every stipendiary preacher that readeth any lectures, or catechiseth, or preacheth in any church or chapel, shall twice at the least every year, read himself the divine service upon two several Sundays, publickly, and at the usual times, both in the forenoon and afternoon, in the church where he readeth, catechiseth, or preacheth; and shall likewise as often in every year administer the sacraments of baptism (if there be any to be baptized) and of the Lord's supper, in such manner and form, and with the observation of all such rites and ceremonies, as are prescribed by the book of common prayer in that behalf, upon pain of removal from his place, by the bishop of the diocese, 'till he submit; the same is required of beneficed preachers, upon pain of suspension.

Must have a licence from the
bishop.

3. And the law requires, that such lecturer should not only have the consent of those by whom he is employed, but likewise the approbation and admission of the ordinary; and he must likewise, at the time of his admission, subscribe the declaration and acknowledgment required by the statute 14 *Car. 2. c. 4.* and this he must do in the presence of the bishop, and get him to certify it under his hand and seal; which certification and declaration he must read within three months following, in the parish church where he is to officiate, on some Sunday, in the time of divine service, and in the presence of the congregation; and if he neglects it, he loses his place. He must likewise have a licence from the bishop, and read the thirty-nine articles in his presence, and declare his unfeigned assent to the same; and if he preaches in the week-days, he must read the common prayer for the day, when he first preacheth, and declare his assent to that book, and shall do the same the first lecture day in every month, so long as he continues lecturer; if he neglect or refuses, he is disabled to preach till he conform. And if he shall preach before he conforms, he shall be committed for three months without bail, by a warrant of two justices of the peace, the offence being certified to them by the ordinary.

Case of a lecturer recovering
his salary.

4. In *Michaelmas* term 15 *Car. 2.* a bill in equity was exhibited to recover the payment of one hundred pounds a year, which was granted to the plaintiff by order of the vestry, in the parish of *St. Botolph Bishopsgate*; there was a defect in the bill, because all the parties to the order were not named in it, and made defendants, and for that reason the plaintiff had no decree; but the court was of opinion, that the arrears were justly due, and inclined to make a decree for the payment, if it had not been for that defect in the bill.

5. The bishop is a proper judge of the fitness of the person to be licensed as a lecturer; (for he must be licensed) but if the
right

right of the lectureship comes in question, a prohibition will be granted. 3 Salk. 87. Lord chief justice Holt said, that let a parson be ever so orthodox and able, yet he is punishable for his presumption, if he preach without licence of the ordinary; but the ordinary *ex debito justitiæ* ought to give such licence to him that is fit; but if he refuse, no *mandamus* will lie, but his remedy is to appeal. Mich. 12 W. 3. Cases B. R. 433. Mr. Justice Powell said, that by the old canon law preaching was no part of the minister's office, however it came to be so much in vogue now; but only reading mass, and administering the sacraments; and nobody preached then without the licence of the bishop, but he appointed preachers. That now since the act of uniformity, if the bishop denied to grant a licence to a parson, who was fit to preach, they would grant a *mandamus* to him to grant one. Mich. 4 Annæ, Colefat v. Newcomb. 2 R. 1206. Lord chief justice said, that if a person preach in a parish church without leave of the parson, he is a trespasser. Cases B. R. 420. An annual sum being left for the support of a lecturer to be chosen and removed by the parishioners, one Reynolds, who claimed to be duly elected, (upon a contested election) sued the churchwardens in the spiritual court, for refusing to open the church to him; whereupon the court of King's Bench granted a prohibition to stay the proceedings in the spiritual court, because Reynolds had not shewn in his libel in the spiritual court, that he had a licence from the parson of the church, in whom the freehold of the church is, and without whose consent none can preach in his church. And lord chief justice Holt was of opinion, if the ordinary had appointed one to come, and preach in such a church, yet he could not justify doing it without consent of the parson. And if a person give a charity to a certain clerk for preaching in such a parish, he must do it by consent of the parson. Mich. 12 W. 3. Turpin v. Reynolds. Cases B. R. 433.

CHAP. VIII.

Of Readers.

IN several parishes also, when prayers are read on week-days, there are also READERS to read divine service, for a stipend paid by the parish; this may be done by one of twenty-three years of age, and only in deacon's orders, who may also catechize children, baptise infants, bury and marry; and before the act of uniformity, a deacon might have been an incumbent on

on a living, but not since; and the very form of ordering deacons expressly mentions, that it is his office to assist the priest in the distribution of the holy communion; and from hence a question hath arisen, viz. that since by the statute of 14 Car. 2. c. 4. those who are not priests by episcopal ordination, are prohibited to administer the sacrament of the Lord's supper, under the penalty of one hundred pounds, one moiety to the king, the other to be divided between the poor of the place and the prosecutor, whether a deacon doth not incur that penalty by distributing wine to the communicants? But it seems clear that he doth not, for we do not hold that this sacrament is administered by giving the cup only.

Before we leave this head of incumbents, it may not be improper to mention a few things, besides those before mentioned in chap. 2d, the ignorance or neglect whereof may subject them to several severe penalties, and in some cases to deprivation itself.

C H A P. IX.

Of Pluralities.

Stat. 21 H. 8.
c. 13. set forth.
Residence.

1. **B**Y statute 21 Hen. 8. c. 13. it is enacted, that every beneficed clergyman shall be personally resident, at or upon his benefice; and if any such person shall wilfully absent himself from his said benefice, &c. by the space of one month at one time, or two months at several times in any one year, he shall be accounted at several times; such person so absenting himself shall forfeit ten pounds for every such default, one half to the king, the other half to the informer, to be recovered as is expressed in the said act.

2. Every pluralist, by special provisos in the body of his dispensation, is obliged to reside two months in every year of that benefice from which he is absent for the most part, and in both his churches, to preach every year thirteen sermons; and a rector and vicar are both upon the same foot by statute law, only the vicar is sworn to residence, the rector is not: But the oath is with a condition, *nisi aliter dispensatum fuerit*; so that if the vicar be dispensed with, there is, in this respect, no difference between them.

3. By the same statute 'tis enacted, that if any person having one benefice with cure, &c. being of the yearly value of eight pounds or more, shall accept another with cure, and be instituted and inducted into the possession thereof, that immediately after such possession, the first benefice shall be void, and the person

on might present another; and that his presentee was to have the benefit of the same, as if the incumbent had died or resigned, and that any licence, union, or dispensation to the contrary should be void. 'Tis true, the statute is, that the person must be instituted and inducted into the second living; but yet a bare institution, without induction, will make an avoidance; for otherwise, a man may get institution to several benefices, and under other persons to be presented, and by getting sequestrations of the profits, may not only defeat this act, but all canons made against pluralities.

A bare institution enough to make an avoidance.

4. This had been an excellent law against pluralities, and all dispensations to obtain them, if it had gone no further; but there being above three thousand four hundred benefices in England, of ten pounds *per annum* in the king's books, by the latter part of this statute, there are so many qualifications to be a pluralist, that the nobility may qualify above one thousand chaplains, besides those of the king, and probably as many may be qualified by birth and dignities, which in a great measure eludes the force and good intentions of this act. *Vide* the act. For it seems clear, that the parliament chiefly had regard to the poverty of small benefices, because the act doth not make the second living void, where the first is under eight pounds *per annum*, that is according to a valuation made *anno* 26 H. 8. and when returned into the exchequer, and now in the first-fruits office; and not according to the real value; for the livings which are worth fifty pounds *per annum*, are valued in the king's books at eight pounds and no more; though some books are to the contrary; as *Noy's Reports* 38. *Cro. Eliz.* 853. The damages recovered in a *quare impedit* shall be tried according to the real value, because 'tis against a wrong doer, to the prejudice of another person. But archdeaconries, chancellorships, chantries, deaneries, prebends in cathedral or collegiate churches, parsonages, where there is a vicar endowed, are not comprehended in this act under the name of benefices with cure.

Many qualifications to elude the statute against pluralities.

5. *N. B.* If a clergyman hath dispensation to hold two benefices with cure, &c. and afterwards he accepts a third, if the dispensation is particular, that is, if it expresses the very benefices which are dispensed to be retained, then if he hath no other dispensation, the two first are void; but if he hath only a general dispensation to hold two benefices without naming them, then, if he accepts a third, the first is only void. - *Noy* 149.

Dispensations

6. I shall mention in what manner persons may be qualified to have dispensations to hold two livings; and that is, 1st, by retainer or service; 2dly, by birth; 3dly, by dignity. *Vide* the statute.

Persons qualified to have dispensation.

7. As to retainer or service, if a lord or other person doth retain his full statute number, and likewise some more, those supernumeraries are not qualified for a plurality, though they

1st, By retainer or service.

should

on a living; but not since; and the very form of ordering deacons expressly mentions, that it is his office to assist the priest in the distribution of the holy communion; and from hence a question hath arisen, viz. that since by the statute of 14 Car. 2. c. 4. those who are not priests by episcopal ordination, are prohibited to administer the sacrament of the Lord's supper, under the penalty of one hundred pounds, one moiety to the king, the other to be divided between the poor of the place and the prosecutor, whether a deacon doth not incur that penalty by distributing wine to the communicants? But it seems clear that he doth not, for we do not hold that this sacrament is administered by giving the cup only.

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3. By the same statute 'tis enacted, that if any person having one benefice with cure, &c. being of the yearly value of eight pounds or more, shall accept another with cure, and be instituted and inducted into the possession thereof, that immediately after such possession, the first benefice shall be void, and the person

on might present another; and that his presentee was to have the benefit of the same, as if the incumbent had died or resigned, and that any licence, union, or dispensation to the contrary should be void. 'Tis true, the statute is, that the person must be instituted and inducted into the second living; but yet a bare institution, without induction, will make an avoidance; for otherwise, a man may get institution to several benefices, and under other persons to be presented, and by getting sequestrations of the profits, may not only defeat this act, but all canons made against pluralities.

4. This had been an excellent law against pluralities, and all dispensations to obtain them, if it had gone no further; but there being above three thousand four hundred benefices in England, of ten pounds *per annum* in the king's books, by the latter part of this statute, there are so many qualifications to be a pluralist, that the nobility may qualify above one thousand chaplains, besides those of the king, and probably as many may be qualified by birth and dignities, which in a great measure eludes the force and good intentions of this act. *Vide* the act. For it seems clear, that the parliament chiefly had regard to the poverty of small benefices, because the act doth not make the second living void, where the first is under eight pounds *per annum*, that is according to a valuation made *anno* 26 H. 8. and when returned into the exchequer, and now in the first-fruits office; and not according to the real value; for the livings which are worth fifty pounds *per annum*, are valued in the king's books at eight pounds and no more; though some books are to the contrary; as *Noy's Reports* 38. *Cro. Eliz.* 853. The damages recovered in a *quare impedit* shall be tried according to the real value, because 'tis against a wrong doer, to the prejudice of another person. But archdeaconries, chancellorships, chantries, deaneries, prebends in cathedral or collegiate churches, parsonages, where there is a vicar endowed, are not comprehended in this act under the name of benefices with cure.

5. *N. B.* If a clergyman hath dispensation to hold two benefices with cure, &c. and afterwards he accepts a third, if the dispensation is particular, that is, if it expresses the very benefices which are dispensed to be retained, then if he hath no other dispensation, the two first are void; but if he hath only a general dispensation to hold two benefices without naming them, then, if he accepts a third, the first is only void. - *Noy* 149.

6. I shall mention in what manner persons may be qualified to have dispensations to hold two livings; and that is, 1st, by retainer or service; 2dly, by birth; 3dly, by dignity. *Vide* the statute.

7. As to retainer or service, if a lord or other person doth retain his full statute number, and likewise some more, those supernumeraries are not qualified for a plurality, though they should

A bare institution enough to make an avoidance.

Many qualifications to elude the statute against pluralities.

Dispensations

Persons qualified to have dispensation.

1st, By retainer or service.

should be first preferred. *Dyer* 312. *Moor* 277, 678. *Cr.*
Eliz. 723, 839. *4 Rep.* 90. *Moor* 561. So if any peer should
 have a double capacity to qualify clergymen, as if a baron
 should be made master of the rolls, he can qualify only according
 as he is a peer, and no more; for that is his best capacity.
 And if the eldest son of a peer retaineth chaplains in the
 life-time of his father, who afterwards dies, such retainer shall
 not qualify those men, because the son was not capable to do so
 at the time of the retainer. But if a baroness, being a widow
 retains two chaplains, and marries before either of them are pre-
 ferred to a second living, this retainer is good. *4 Rep.* 118
b. 79. And it is to be observed, that these retainers must be made
 before the institution to the second benefice; for if they come
 afterwards, 'tis too late. *4 Rep.* 77. *b.*

2dly, By birth.

8. Qualification by birth, is where the clerk is brother or
 son of any temporal peer, or the son of any knight born in mar-
 riage, he may have a dispensation to hold two livings; so that
 the son of a knight hath in this respect a greater privilege than
 the son of a baronet, because that dignity was not created when
 that statute was made.

3dly, Qualifica-
 tions by dignity.

9. Qualifications by dignity, is where persons are admitted
 to the degrees of doctors and bachelors in divinity, or in the civil
 laws in either of our universities.

What qualifies a
 lord's chaplain.

10. In all those cases where a person is qualified by service,
 he must carry his testimonial of retainer, under the hand and
 seal of his lord, to the master of the faculties, who is to make
 out the dispensation, and this must be sealed afterwards under
 the great seal; and then he may apply himself to the bishop of
 the diocese for institution, and not before; for the first living is
 void upon the institution to the second.

C H A P. X.

Of Simony.

Stat: 31 El. c. 6. 1.
 set forth.

A Church, notwithstanding institution and induction had,
 may remain void by the act of the law, by the inca-
 pacity of the presentee, because of some simoniacal contract pre-
 ceding the presentation to it, and upon which the presentation
 is made. For by stat. 31 El. c. 6. 'tis enacted, That if any per-
 son, for any money, reward, gift, profit, or benefit, directly or
 indirectly, or for or by reason of any promise, agreement, grant,
 bond, covenant, or other assurance for any money, reward,
 gift, profit, or benefit whatsoever, directly or indirectly, shall
 present

present or collate any person to any benefice with cure of souls, dignity, prebend or living ecclesiastical, &c. or give, or bestow the same, for, or in respect of any such corrupt cause or consideration, that then every such presentation, collation, gift, and bestowing; and every admission, investiture, institution and induction thereupon, shall be utterly void, &c. And the queen, her heirs and successors, shall presently collate, &c. for that one turn only.

2. And every person that shall give or take any such sum of money, &c. or that shall take or make any such promise, &c. shall forfeit and lose the double value of one year's profit of every such benefice. And the person so corruptly taking any such benefice, shall thereupon, and from thenceforth, be adjudged a disabled person in law, to have and enjoy the same benefice, &c.

3. And further, if any person shall, for any sum of money, &c. *ut supra*, admit, institute, &c. instal, induct, invest, or place any person in or to any benefice with cure, &c. that then every person so offending, shall forfeit or lose the double value of one year's profit of such benefice, &c. and that the said benefice, &c. shall thenceforth be void; and the patron or person to whom the advowson, &c. shall and may, by virtue of this act, present or collate, &c. as if the person were naturally dead, but no lapse is hereby to incur 'till six months after notice.

4. And if any incumbent with cure of souls, do or shall corruptly resign or exchange the same, or corruptly take for resigning or exchanging the same, directly or indirectly, any pension, sum of money, or benefit whatsoever, that then the giver and taker of any such sum, &c. corruptly, shall lose double the value of the sum so given, taken or had; the one half to the queen, &c. and the other to him who will sue for the same in any court of record, &c.

5. And further, if any person shall receive or take any money, fee, reward, &c. for or to procure the ordaining or making of any minister, &c. giving any order and licence to preach, shall forfeit forty pounds; and the minister so made ten pounds.

6. And if such minister within seven years next after such corrupt entering into the ministry, &c. shall accept or take any benefice, living, or promotion ecclesiastical, the same living, &c. after induction, &c. shall be void, and the patron may present, &c. as if the party so inducted were naturally dead; the one half of the forfeitures to be to the queen, her, &c. and the other to the informer, &c.

7. Mental or intentional simony is not punishable, either by the common or statute law, whatever it may be by the canon; No mental simony in our law. for to make it simony by our law, there must be actual payment of money, or a contract to pay it.

8. By this statute, the patron is not only to lose his presentation *pro hac vice*, but he is also to forfeit double the value of the patron taking; Penalty on patron taking;

on person
giving.

the living, according to the utmost value; and this he forfeits upon a corrupt contract only, though the clerk is not presented. But the king is not to have the presentation, unless the clerk is actually presented; and in such case, if he dies incumbent, the king shall not lose his presentation, because it was void, and the church was never full of him. He who gives or takes such reward or assurance, forfeits double the value of one year's spiritual promotion, and the person corruptly taking such promotion, shall be disabled to enjoy the same; so that this clause takes in both patron and incumbent.

Cases of simony. 9. The words of the statute are, that the person corruptly taking a promotion, shall be disabled to enjoy the same. Now this clause being so very penal to the corrupt taker, it hath been a question, whether a person can be said to take a benefice corruptly, who is not *simoniacus*, but only *simoniace promotus*; that is, who is admitted to it upon a corrupt presentation, to which he was not privy nor consenting. Lord Coke in his 3d *Inst.* 134, tells us, that such a person is not disabled by the statute. But he says, the living is void; and if the king, whose turn it is, will then present him, 'tis good, and he shall enjoy that benefice; and *Butler and Baker's case* is cited in the margin of the 3d *Inst.* to prove it. This case is reported by justice Croke, and serjeant Moor, in which it appeared, the incumbent did not know the corrupt agreement till after he was inducted; and yet he was disabled to enjoy that living. *Cro. Eliz.* 788. *Moor* 913. But this must be taken only that the presentation is void for a man can never be said to be corruptly taking, who is not privy to the corrupt agreement.

10. But there may be simoniacal promotion, where neither the patron nor the clerk are privy to it; as if a friend of the clerk give money to a relation of the other, to procure him to present that clerk; in such case, the right of presentation will be void in the king, *pro hac vice*. *Sid.* 329. 1 *Keb.* 682. 'Tis true, justice Windham was against the judgment; because the patron's right might be defeated by collusion between two strangers, which he held to be very unreasonable. But the law in this point now is in some sort altered in favour of all patrons not guilty of such simony, and their clerks, for which see stat. 1 *W. & M.* c. 26. viz. when the simoniac is dead, &c. For much more concerning simony, see the case of the *Bishop of St. David's* *Lucy*. 1 *Ld. Raym.* 447. 1 *Salk.* 134. *Carth.* 484.

11. If the clerk himself contract with the patron for the presentation, when the incumbent is sick, and for that purpose that it should be granted to a friend, who upon the death of the incumbent presents that very person, this is simony. *Hob.* 16. *Cro. Eliz.* 686. *Moor* 916. So if a stranger, or relation of a clergyman, during the sickness of the incumbent, agrees with the grantee of the next avoidance, to present him, and according

gly he is presented; this is simony, though the clerk is not privy to the agreement; *a fortiori* where he is a party and knows. A sale was of an advowson with a covenant to present such a person as the bargainee shall nominate, the church at that time being full of an incumbent by usurpation, and a *quare impedit* then pending to remove him, by which he was afterwards removed; this is simony. *Walker v. Hammerfly, Skin. 10. 3 Lev. 115.* But if the father (the incumbent of the church being sick) purchases the next avoidance, in the presence of his son, with an intent to present him, and doth present him after the incumbent's death, it seems the better opinion that this is not simony, as was adjudged by three justices (according to *11 Ro. Eliz. 685.*) against *Anderson C. J.* upon this reason, that the father is bound by nature to provide for his son. And *Anderson* admitted, that this contract with the father, with an intent to present the son, without the privity of the son, would not have been simony. It is to be remembered also, that according to *Lord Hobart*, if in the grant of the next avoidance it appears, that it was to the intent to present his son, and it is done accordingly, it is simony; *ideo quære*, and why it is lawful and usual to purchase the next avoidance of churches.

12. But if a father, upon the marriage of his daughter, covenants to pay a portion, &c. and there is a distinct covenant, that he will procure the son in law to be admitted to such benefice upon the next avoidance, this shall not be intended to be simoniacal, because the covenant had no dependance upon the marriage; it was an intire covenant by itself, and not made in consideration of marriage; for if it had, then it would have been simony; but it may be made so by a special averment, shewing that it was simoniacal. Like to this was a case *anno W. 3.* where the incumbent covenanted with the patron, to resign by all lawful means at his request, so that he might present again; and the patron covenanted to pay the incumbent an hundred and fifty pounds on such a day, in lieu of the tithes: this was held to be a distinct covenant, and not simoniacal, without a special averment. *1 Lut.*

13. A promise to give money, in consideration the plaintiff would endeavour to procure the person to be rector of such a church, is simoniacal. *Jones 341.*

14. If the patron takes a bond of the clerk, to pay so much money every year, towards the maintenance of the last incumbent's son at the university, and whilst he is unpreferred, or to his widow; this is not simony, for these are charitable actions. *142.* If the next presentation is granted to a clergyman, who gives bond to pay for it when the church becomes void, this is simony. *March 158.* If the clerk gives a bond to pay one hundred pounds *per annum*, to the patron, and an action of debt is brought upon this bond, and the defendant exhibits a

bill in equity to be relieved, setting forth, that the bond was given upon a simoniacal agreement: After the defendant had answered, this bill was admitted as evidence to prove the simony. *Sid.* 221. *1 Keb.* 780.

15. If a clerk agrees with a stranger to procure the grantee of the next avoidance to surrender to another, and to influence the surrenderee to present him when the church is void, which was afterwards done, this is also simony. *2 Brownl.* 7. *2 Ro. Ab.* 307. p. 16. Mortgagee of a manor and advowson being in possession, the church becomes vacant; the mortgagor makes a simoniacal presentation to *A.* which is rejected by the bishop; then the mortgagor and mortgagee join in presenting *B.* *C.* gets the title of the crown; and brings an information in the name of the attorney general to remove the mortgagee's title, and that it might not be set up at law; and it was so decreed. *Attorney general v. Hesketh, Scarisbrick, and Sadell, 2 Vern.* 549. *Eq. Ab.* 131. p. 11. The same case follows as reported by another: *A.* mortgages a manor (to which an advowson was appendant) in fee to *B.* then *A.* presents *C.* by simony, and *C.* being for that reason refused by the bishop, *A.* presents *D.* who is admitted, &c. but after resigns, and is again presented by *A.* and *B.* the relator having got an assignment of the king's title, for the simony, brings his *quare impedit* and a bill in this court, that the mortgage may not be set up, nor given in evidence against him at law; and decreed accordingly. *Prec. in Chan.* 214. *Attorney general, at the relation of Hindly, v. Sudele, Hesketh and Scarisbrick.*

Forfeiture of
admitting one
simoniacally.

16. By the statute, the person who admits, institutes or inducts a clergyman for any reward or assurance, forfeits double the value of one year's profits of the living, and the admission and institution are void, and the true patron shall present again, but no lapse shall incur upon such avoidance, till six months after notice given by the ordinary to the patron.

17. If two clergymen agree to exchange livings, and one promiseth his patron, that if he will present the other, he shall demise the tithes to him at such a rent, this is simony, if the lease be afterwards made pursuant to that agreement, though the lessor was not privy to it when it was made. And as all corrupt exchanging benefices, so likewise all corrupt resignations are prohibited by this statute.

A presentation
on a simoniacal
contract void as
to all persons in-
terested in the
benefice.

18. Upon the whole matter, a presentation upon a simoniacal agreement is void, as to all manner of persons who have any interest in the benefice, except the patron, who is to lose his right of patronage *pro hac vice*, for that is vested in the king, and he may present without any sentence of deprivation. 'Tis void as to the ordinary, for he is bound to admit the king's presentee, and no lapse can incur, where the right of presentation is vested in him; but if the patron was not privy to the simony, and

and the clerk only is *simoniacus*, there the ordinary cannot collate by lapse, till after six months notice given to the patron. 'Tis void as to the clerk, without a declaratory sentence, though he was not privy to it; for he was *simoniace promotus*, though he was not *simoniacus* himself; and in such case he is disabled to hold the benefice which was got by that means; but if he is privy to the simony, then he is made for ever incapable to hold any spiritual promotion; and though the king should promote him to the same benefice, with a *non obstante* to the simony, if he pardon it, yet he can have no title, because the king cannot enable him whom an act of parliament hath disabled; and the pardon only discharges the punishment, as to the forfeiture of the double value, and can never enure to settle him in a benefice which was not full, by reason of the simony. 'Tis void as to the parishioners; for if the parson sue for tithes, they may plead that he is not incumbent, for he hath no right to the profits, from the time the church became void, nor at any other time: but all those are due to the clerk whom the king should present, even from the time of the avoidance; because the preceding clerk being inducted upon a simoniacal presentation, the church was never full of him, but it still remained void by virtue of this statute. And if the king should not present during the life of the simoniac, but he dies incumbent, and then the patron presents, his clerk thus presented and admitted, will be intitled to all profits since the last avoidance by the death of the legal incumbent.

19. Before stat. 1 *W. & M. c.* 16. the king might remove the patron's clerk, and in such case the presentee could claim only the profits from his institution; but now since this statute, the person who was promoted by simony should die incumbent, his offence should not be prejudicial either to a patron who is not privy to it, or to his clerk, upon pretence of a lapse, otherwise howsoever; unless the patron or the clerk were convicted of simony in the life-time of such incumbent. And the same statute, leases made *bona fide*, by a person who came in by simony, to any lessee for a valuable consideration, and who is not privy to it, nor had any notice thereof, shall not be avoided. If simoniac die incumbent, his offence shall not prejudice.
Leases by simoniacal persons not avoided.

20. *N. B.* Where a patron presents, who is not privy to the simony of his clerk, he need not be named in a *quare impedit*: for instance; if the clerk contracts with a friend or relation the grantee of the next avoidance, and thereupon gets the presentation, in this case the king may declare against the ordinary and the incumbent, for the patron's title is not in question; he had the benefit of his presentation; 'tis the clerk who is the offender, and he ought to be removed.

21. By a statute made 12 *Ann. c.* 12. if any person, for any reward, in his own name, or the name of any other, shall take Grant of the next avoidance for reward, is simony.

Oath against
simony.

take or accept the next avoidance of, or presentation, to a benefice with cure of souls, and be presented thereto, the presentation shall be void, and such agreement deemed a simoniacal contract, and the crown may present for that time, &c.

22. The oath against simony runs thus, I *A. B.* do swear that I have made no simoniacal payment, contract, or promise directly or indirectly, by myself, or by any other, to my knowledge, or with my consent, to any person whatsoever, for or concerning the procuring or obtaining the rectory of *M.* in the diocese of *W.* nor will at any time hereafter perform or satisfy any such kind of payment, contract, or promise made by any other, without my knowledge or consent.

So help me God, &c.

23. It seems reasonably to be doubted whether the foregoing oath be lawful at this day, because of the statute, which takes away all oaths *ex officio* in the spiritual courts, &c. Stat. 13 Car. 2. c. 12.

24. It is good advice to the purchaser of the next presentation, (whether he designs it for his son or a stranger) 1. That he make the contract, when the incumbent of the church is in health, or at least not in danger of death: 2. That he do not declare his intention of kindness to the person whom he intends to present: 3. That the intended clerk be not present at the contract, nor named in the deed, by which the power of presentation is granted; for by observing these cautions, he may avoid expensive and hazardous questions in law.

Before I quit this subject, it may not be amiss to mention a few things relating to *bonds of resignation*; of which in the next chapter.

CHAP. XI.

Of Bonds of Resignation.

Of bonds of re-
signation.

1. **I** Find that a bond with a general condition to resign a church benefice upon some months notice is good, for there is a solemn judgment given in the court of King's Bench that such a bond is good; because there is nothing bad in the condition, that being only to resign upon notice. And that which gives a greater authority to this judgment is, that it was affirmed upon a writ of error in the exchequer chamber, where all the judges were of opinion, that it was lawful for a man to bind himself in a penalty to resign, because that may be for good

and valuable purposes, as to resign if he takes another benefice, or to resign when the son of the patron comes of age. *Jones v. Lawrence*, 2 Cro. 248, 174. 2 D. A. 18. p. 1. And if he do not resign upon request, he is subject to the whole penalty of the bond; for simoniacal bonds, contracts, &c. are not made void by this act, but only the presentment, &c.

2. About nineteen years afterwards, the like case came in question again in the same court, between *Babington* and *Wood*; and the like judgment was given for the bond, upon a demurrer to the declaration. *Cro. Car.* 184. 1 *Jones* 220. *Hutt.* 111. D. A. 18. p. 1. About nine years after that case of *Babington* and *Wood*, the like question was debated between *Carey* and *Geo.* 2 D. A. 18. p. 1. 19. p. 2. and that was upon a demurrer to the declaration, where the action was brought upon such a bond; and the court held the condition to be good, except it had been made for a simoniacal purpose; and if so, it ought to have been pleaded and averred. *Moor* 641. So that the law seems to be so well settled, about thirty years afterwards,

Cases of them.

when an action of debt was brought upon a bond with such a condition, between *Watson* and *Baker*; the defendant was advised not to demur to the declaration, and insist that the bond was simoniacal; but he pleaded *in forma juris resignavit*, and that the bishop accepted his resignation. *Watson and Baker*, 1 Sid. 387. 1 Raym. 175. 2 Kcb. 446. 2 D. A. 18. p. 1.

3. By *Holt*. ch. just. in the case of *Sawaine* and *Carter*, 8 W. B. R. a resignation bond comes as near simony as can be; see *Comb. Rep.* 394. notwithstanding which opinion, it is generally held at this day, that such bonds are valid in law and equity. But the chancery will restrain the patron that he shall not make any ill use of such bond, as by obliging the incumbent to take an under rate for his tithes, or the like. The defendant upon his presenting the plaintiff to a parsonage took a bond of him to resign, which though in itself lawful, yet the patron making an ill use of it, viz. to prevent the incumbent from demanding tithes in kind, the court awarded a perpetual injunction against the bond. *Durston v. Sandys*, 1 Vern. 411. 2 C. C. 186. 2 C. R. 398. *Eq. Ab.* 86. p. 2.

4. Upon the whole matter, these bonds to resign generally upon notice have been held good, both in law and equity. I shall only add, that if such a bond is put in suit, and the defendant pleads *resignavit* on such a day to the bishop, and that he accepted it, this shall be tried by the country, and not by certificate from the bishop. *Sid.* 387. On a motion to dissolve an injunction, granted to stay proceedings in an action on a bond, given by an incumbent to his patron, that he (the incumbent) should resign on request; *lord keeper* said, he was not satisfied, that such a bond was good in law: The precedents that were in the case were not directly to the point, whether such bonds

are simoniacal or not; he therefore directed that the plaintiff should declare on this bond, and the defendant plead simony, and after that, and judgment at law, come back to the court.
1 Vern. 131. *Grabme v. Grabme*.

Resignation must
be accepted by
the bishop.

5. And it is to be observed, that a benefice with cure cannot be void by the sole act of the party, *viz.* by resignation, without the acceptance of the bishop, because he is to give notice to the patron that he may present again; but if he refuses to accept it, then, notwithstanding the resignation, the incumbent continues so still.

The Condition of a Bond of Resignation.

6. **W**HEREAS A. B. is within a short time to be presented, instituted and inducted to the church of L. in the county of B. if therefore the said A. B. shall after his admission, institution and induction thereunto, at any time, upon the request of J. S. his heirs, executors, or administrators, resign the said church or rectory of L. to the ordinary or guardian of the spiritualities of the diocese of S. for the time being; so that the said J. S. his heirs or assigns, patrons of the said church, may present again to the same, discharged of all incumbrances done or suffered by the said A. B. Then, &c.

CHAP. XII.

Of Tithes.

Tithes to whom
payable,

1. **T**HE maintenance of the parochial clergy is, 1. By the glebe, which takes in the house. 2. By offerings. 3. By tithes. All tithes are due of common right to the parson or rector of the parish where they arise, (see above, chap. 1. §. 26, 27.) but by the endowment or prescription they may belong to the vicar; and the parson of the one parish may prescribe to have a portion of tithes separately and divided in the parish of another, probably for the reasons contained in the above sections of chap. 1.

2. If an impropriator, parson or vicar leases his glebe land, and does not grant the tithes thereof, the farmer or occupier shall pay tithes to the impropriator, parson, or vicar; and if a patron sows his land, and sells the corn growing, the buyer shall pay tithes of it to the parson. But if a parson purchases lands in the same parish whereof he is parson, and leases out his tithes, he shall pay tithes to the farmer of them. 11 Co. 13, 14.
1 Ro. Abr. 655. 1 Cro. 161.

3. A vicar upon a general endowment shall not pay tithes to the parson of his glebe, if he keeps it in his own hands. Neither shall the parson pay the small tithes of the glebe lands in his own hands, to the vicar, who is endowed of all the small tithes in the parish: But this is otherwise, if the glebe be in the hands of a tenant. And if the endowment had been by express words of the small tithes of the glebe of the parsonage, the parson should pay small tithes to the vicar, though the glebe was in his own hands.

4. If a parishioner sows his lands, and before severance the parson dies, the successor shall have the tithes from the death of his predecessor: But if the corn, &c. is cut down, the executor of the deceased shall have the tithes, though the corn, &c. was not actually tithed before the death. And if a parson sows his glebe, and dies, his executor, &c. shall have the corn, but he shall pay tithes to the successor. If the glebe be in the hands of a tenant, and the parson dies after severance of the corn, and before rent is due, neither the executor nor successor is intitled to the rent, but the tenant may retain both it and the crop, unless there was a special covenant to apportion in favour of the executor. It hath been resolved, that a parishioner need not give notice to the parson of his setting forth of tithes. *Comb.* 28. but see *Rol.* 643. 2 *Rol.* 302. *Degg's Parson's Counsel* 220. *Hob.* 107. That a custom for tithing without view, will. *Quære* the difference. After the parishioner hath set out the tithe, if the parson do not carry it away in convenient time, the parishioner must not put in his cattle, but may have an action in the case. *Shapcott v. Mugford*, 1 *Ld. Raym.* 187, &c.

5. Tithes are the tenth part of the yearly increase arising from profits of lands, stock upon lands, and the industry of the parishioner, payable by every one that hath things titheable, if he cannot shew a special exemption to the contrary. They are payable out of the same land, &c. but once in the year, unless custom hath prevailed to the contrary. For by custom, tithes may be demanded of such things as are not titheable of common right, as of fish, and conies to be sold, but not of those spent in the house. The general rule given in this section is the common law: But, there are infinite instances where custom prevails, in some places, for the benefit, in others to the disadvantage, of the incumbent; and such customs generally prevail against the common law. The like rule holds good for determining in some places what shall be called great, what small tithes, in the case of parson and vicar; the endowment of the vicar ordinarily consisting of small tithes, as hath been said.

6. Tithes are of three kinds, *predial*, *personal*, and *mixed*. *Predial*, those which arise immediately from the lands, spontaneously, or by labour of man, as grass, grain, hay, wood, &c. these are payable without deducting any charges. 2. *Personal*, such

Tithes of what payable.

Predial, *personal* *mixed*.

such as arise only from the labour and industry of man, (common day labourers excepted) being the tenth of his clear gain in his profession or occupation, charges deducted; these are only paid by custom, and perhaps no where except for mills, or fish caught at sea. 3. *Mixed*, are those which arise mediately from the ground, but immediately from animals, as colts, lambs, wool, eggs, &c. they are payable where they arise. The spiritual court has a general jurisdiction of tithes; therefore when a person sued there for tithes, has any special matter to plead which deprives them of their jurisdiction, he ought to plead there; and if they refuse to admit the plea, a prohibition will be granted. *Dike v. Brown*, 2 *Ld. Raym.* 835.

Tithes great and small.

7. Tithes are also commonly divided into *great* and *small*; the *great* being corn, hay, and wood; the *small* are all other predial tithes, and personal and mixed tithes: But (as is said above §. 4.) custom varies this rule in many places. Wood, being timber of twenty years growth or upwards, is discharged of tithe by an act of parliament, and so is barren land of its own nature barren; and the corn, &c. produced there for the first seven years of its improvement. And so are mills erected before the memory of man, and which never have paid tithes. And it is said that the tenth toll dish is no where paid, and that the tithe is only a personal tithe, and to be paid with a deduction of charges. It was argued, whether the tithe of 26 acres sown with flax be a great tithe or a small, there being 1300 acres in the parish. A case was cited for the plaintiff, between *Witherington* and *Henden*, in *Scat. Pasch.* 27 C. 2. that turnips sown in great quantities are great tithes. But *Dolben J.* denied that it was so resolved, but that the tithes remain of the same nature whether in gardens or fields, and of that opinion were the rest of the justices: But they said, if the greatest part of the parish should be sown with flax, perhaps they might alter their opinion. *Comber* 209. *Carth.* 263. *Skin.* 341, 356. 3 *Lev.* 365. 4 *Mod.* 183. *Cases B. R.* 41. 2 *D. A.* 594. p. 5.

8. The rules already given may generally instruct the judgment of the readers; but at the desire of some of them, we have, in this edition, enlarged this chapter with the addition of an alphabetical table. It is to be remembered, that to make a thing titheable, it is not precisely necessary that the increase be annual or every year: Thus timber titheable, is cut, perhaps, only once in seven, ten, or fifteen years.

Offerings, dues, &c.

9. Offerings are reckoned to be in the nature of tithes personal, which arise from the labour of the parishioners; they are payable according to custom, either at stated times, as at *Easter* or occasionally, as at sacraments, marriages, burials, churching of women, &c. Some of them are payable to the parson, &c. of the parish where the party dwells: But it has been adjudged that the claim for a burial was not good when the corpse was buried

buried in another parish; *Note*; by an act passed 8 Geo. 2. for building *Shoreditch* church, it is enacted, That for every person who shall, during the continuance of this act, (*i. e.* while the annuities for lives shall last) die within that parish, and be buried in any other ground, &c. there shall be paid for the use of the said parish the same duties, as if such person had been buried in the parish; and after the determination of all the annuities to be granted by that act, the ancient and accustomed rates for funerals are only to be paid as specified in an indenture mentioned in the act.

10. By stat. 2 & 3 Ed. 6. c. 13. no person shall take or carry away the tithe, till set out or agreed for with the parson or other proprietor thereof, upon pain of forfeiture of the treble value; to be recovered in the temporal court by action of debt (the forfeiture to the party grieved.) But if suit be brought in the spiritual court, double the value shall be recovered, besides costs of suit. But in the temporal court, nothing is to be recovered besides the treble value; neither the tithes themselves, nor any satisfaction for them; nor could either damages or costs be recovered with the treble value, till costs were particularly given by statute 8 W. 3. c. 11. where the single value shall not exceed six pounds thirteen shillings and four pence. And an executor may have an action upon this statute for tithes not set forth during the life of the testator. Statute for due setting out of tithes.

11. If a quaker refuse to pay tithes, or church rates, by the statute of 7 & 8 W. 3. c. 34. he may be convened before two justices, who shall examine and determine in all cases of or under ten pounds, and levy by distress in case of refusal to pay; and by statute 1 Geo. 1. c. 6. this act is extended to the recovery of any right or stipend belonging to the church, &c. or to any church rates, with costs not exceeding ten shillings. But an appeal lies to the quarter-sessions, where, if judgment be confirmed, costs shall be given against the appellant. And no *certiorari* is to be allowed, unless the title to the tithes come in question. Method of suing quakers for tithes.

12. And by a statute 7 & 8 W. 3. c. 6. made at first for three years, but afterwards continued for seven years; and by an act passed 3 & 4 Anna, c. 18. made perpetual, 'tis enacted, That small tithes, of or under the value of forty shillings, being withheld twenty days after demand, upon complaint made in writing to two justices, neither of which shall be interested, they shall summon the party in writing, and determine and adjudge the case in writing, with costs not exceeding ten shillings; and if the sum is not paid in ten days, it shall be levied by distress by the constable, having a warrant from the justices, and after three days detaining them, the goods shall be sold. What small tithes recoverable before justices of peace.

13. Complaint to be made within two years after the tithes become due, and an appeal lies to the quarter-sessions, whose judgments shall be final, unless the title comes in question. And

if

if prescription, or a *modus*, or composition, be insisted upon, security must be given to pay costs if the *modus* be not allowed in which case the prosecutor is at liberty to proceed in any other court. But those who have begun their suit in the ecclesiastical court, are not intitled to the benefit of this act. *N. B.* An ejectment lies of small tithes, even for an egg. *Camell v. Clavering*, 2 *Ld. Raym.* 789. *N. B.* Every *modus* ought to be certain; therefore a *modus* to pay two shillings in the pound of the true improved yearly rent or value, is void for the uncertainty. *Startup v. Dodderidge*, 2 *Ld. Raym.* 1158, &c. *Salk.* 657. *Rep.* 2. *A.* 60. See there more instances of the kind. A *modus* to pay two shillings in the pound of the reserved rent, bad. *Byne v. Dodderidge*, 1 *Ld. Raym.* 696.

Tithes of value generally sued for in the exchequer.

14. But tithes of any considerable value are now generally sued for in the courts of equity by *English* bill, and for the most part in the exchequer; but not upon the statute for treble or double value, for there can be no suit in equity for the recovery of treble or double value; but you may have the single value with costs, which, unless the value of the tithes be very great, is as good as treble value without costs.

How the London clergy must sue for their tithes.

15. But for the *London* clergy there is provision made by stat. 37 *H. 8. c.* 12. whereby 'tis enacted, That the citizens should for ever pay to their respective parsons for every ten shillings rent of houses, shops, warehouses, cellars, and stables, within the city of *London* and liberties thereof, one shilling and four pence halfpenny yearly, unless less hath been accustomed to be paid, and then according to custom. See the case of *Bennet v. Trespass* and others, *Rep. Eq.* 191. These dues in this case cannot be recovered in the ecclesiastical court, because the statute declares how they shall be recovered. *Vide* the statute. These dues are to be paid quarterly, at *Easter*, *Midsummer*, *Michaelmas* and *Christmas*; and the lord mayor, by advice of counsel, is to hear and determine differences arising upon this statute, and give costs accordingly. And it hath been resolved, that suits for those dues shall be before the mayor in writing, and not parol. *Noy* 130. *Meadhouse* and *Taylor*. And that a reservation by a lessor for life, upon a lease made by him for years, shall not bind him in reversion to pay according to that rate. And that a lease for half a year, and after for another half year, is a yearly rent within this statute. Abby lands within the city of *London* and the liberties thereof, are not freed from the payment of tithes within the statute of 31 *H. 8. c.* 13. *Cro. Eliz.* 276. *Moor* 912. 2 *D. A.* 584. *p.* 2. *Hob.* 10, 11. 2 *D. A.* 593. *p.* 1, 2.

16. If rents be continued as they were at the time of making the statute, though upon new fines, tithes shall be accordingly; but if upon new fines less rent be reserved, it shall pay tithes as it did before. *Cro. Jac.* 6. 613. *Scudamore's case*, 2 *Inst.* 659. And

and if no rent be reserved, nor fine paid, the parson shall have his tithes according to the rent at the time of the statute. But if a house hath always been held by the owners, and no rent paid, it shall pay no tithes within this statute. And if the lord mayor shall make any decree against law, a prohibition lies; for the exposition of all statutes belongs to the judges of the common law. Since the fire of London, some alteration hath been made concerning the payment of tithes, by the act 22 & 23 Car. 2. 15. which provides, that the annual certain tithes in London, of those churches which were demolished or burnt, and which now remain single, or are united by the said act, shall be as in the following list.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Allhallows Lombard street	110	0	0
Bartholomew Exchange	100	0	0
Bridget, <i>alias</i> Brides	120	0	0
Bennet Finck	100	0	0
Michael Crooked-lane	100	0	0
Christopher	120	0	0
Dionis Back-church	120	0	0
Dunstan in the East	200	0	0
James Garlick-hith	100	0	0
Michael Cornhill	140	0	0
Michael Bassishaw	132	11	0
Margaret Lothbury	100	0	0
Mary Aldermanbury	150	0	0
Martin Ludgate	160	0	0
Peter Cornhill	110	0	0
Stephen Coleman-street	110	0	0
Sepulchre	200	0	0
Allhallows Bread-street, and St. John Evangelist	140	0	0
Allhallows the Great, and Allhallows the Less	200	0	0
Alban Wood-street, and St. Olave Silver-street	170	0	0
Anne and Agnes, and St. John Zachary	140	0	0
Augustine and St. Faith	172	0	0
Andrew Wardrobe, and St. Anne Black-fryars	140	0	0
Antholine, and St. John Baptist	120	0	0
Bennet Grace-church, and St. Leonard } East-cheap }	140	0	0
Bennet Paul's Wharf, and St. Peter Paul's } Wharf }	100	0	0
Christ-church, and St. Leonard Foster lane	200	0	0
Edmund the King, and St. Nicholas Acons	180	0	0
George Buttolph-lane, and St. Buttolph } Bishopsgate }	180	0	0
Lawrence Jury, and St. Magdalen Milk street	120	0	0
Magnus, and St. Margaret New Fish-street	170	0	0
Michael Royal, and St. Martin Vintry	140	0	0
St. Mat-			

	l.	s.	d.
St. Matthew Friday street and St. Peter Cheap	150	0	0
St. Margaret Pattons, and St. Gabriel Fen church	120	0	0
St. Mary at Hill, and St. Andrew Hubbard	200	0	0
St. Mary Woolnoth, and St. Mary Wool church	160	0	0
St. Clement East-cheap, and St. Martin Orgars	140	0	0
St. Mary Abchurch, and St. Lawrence Pountney	120	0	0
St. Mary Aldermary, and St. Thomas the Apostle	150	0	0
St. Mary le Bow, and St. Pancras Soper-lane and Allhallows Honey-lane	200	0	0
St. Mildred Poultry, and St. Mary Cole-church	170	0	0
St. Michael Wood-street, and St. Mary Staining	100	0	0
St. Mildred Bread-street, and St. Margaret Moses	130	0	0
St. Michael Queen hith, and Trinity	160	0	0
St. Magdalen Old Fish-street, and St. Gregory	120	0	0
St. Mary Somerset, and St. Mary Mounthaw	110	0	0
St. Nicholas Cole-abbey, and St. Nicholas Olave	130	0	0
St. Olave Jury, and St. Martin Ironmonger-lane	120	0	0
St. Stephen Wallbrook, and St. Bennet Sherehog	100	0	0
St. Swithin, and St. Mary Bothaw	140	0	0
St. Vedast <i>alias</i> Foster, and St. Michael Quern	160	0	0

How to be assessed,

and recovered.

17. And these respective yearly sums are to be for the maintenance of the respective parsons in those parishes, in lieu of tithes, besides the glebe, and other perquisites. For the method of assessing the rates, see the act. The sum assessed must be paid at the four most usual feasts quarterly, or within fourteen days afterwards, by equal payments, to commence from such time as the incumbent shall begin to officiate. The impropriators shall allow what they ought to do before the fire, and such allowance is to be part of the parsons maintenance. If the inhabitants refuse to pay, &c. upon demand at the premises, the lord mayor, upon oath of such refusal, may issue out his warrant, for the collector, with the assistance of a constable, to distrain, &c.

18. The lord mayor neglecting, &c. to execute the power granted by the act, the lord chancellor or keeper, or two barons of the exchequer, may, by their respective warrants, do what the other ought to have done. No court or judge shall determine any controversy arising upon the act, other than the persons therein authorized. The wardens and minor canons of St. Paul's may recover the duties arising within the the parish of St. Gregory, as formerly.

19. And for the better recovering the sums of money which shall be due according to the directions of the act of 22 & 23 Car. 2. c. 15. assessed upon the several houses, buildings, and other hereditaments, within the parishes in the said act mentioned (for making up the sums of money which by the said act

re to be paid in lieu of tithes within the said parishes) and which are become a real charge upon the houses, buildings, and other hereditaments, whereupon they are so assessed; so that the arrears of the quarterly payments of those sums, which ought to have been paid by the former occupiers of those houses, &c. or which became due when those houses stood empty, may be levied by distress and sale of the goods of the present occupiers, which shall be found in or upon the said houses, &c. observing the circumstances required by the said act. A decree was made by the lord chancellor *Harcourt*, assisted by Mr. baron *Bury* and Mr. baron *Price*, on the twenty-fourth day of *December* in the twelfth year of queen *Anne*, anno Domini 1713. between *William Savage* and *Montagu Wood*, clerks, plaintiffs, and *Harding* and others, defendants. But the plaintiffs were first to demand of the defendants the said several sums so due as aforesaid, to the end the defendants might have an opportunity of paying the said sums of money, without further trouble or charge. See the decree.

20. By stat. 1 Geo. 1. c. 23. a fund is raised towards providing for the ministers of the fifty new churches; which is by a duty of 3s. per chaldron or per ton, on coals and culm brought into the *Thames*, between *Michaelmas* 1724 and *Michaelmas* 1725. Ministers of the 50 new churches.

21. By a statute made 12 Geo. 1. c. 39. the rector of *St. Mary le Strand* is to have the interest of two thousand five hundred pounds, and for a further maintenance one hundred and twenty-five pounds per annum, to be raised by an equal pound rate on the inhabitants, within the district appointed by the said parish, and the rector, churchwardens and vestry are impowered to make assessments, being allowed by two justices of peace, &c. and the sum assessed shall be yearly collected by such persons as the vestry or churchwardens shall nominate, for whom the parish shall be answerable, &c. *Vide* the statute. St. Mary le Strand.

22. By the statute 13 Geo. 1. c. 35. the curate of *St. Katherine Cree-church*, alias *Christ-church*, *London*, (after the year 1734.) is to have 70 l. per ann. for ever, by assessment on the parishioners; the residue of 150 l. charged on them is to go to *Magdalen college*, *Cambridge*, the rectory being impropriate to the college. St. Katherine Cree.

23. By the statute of 1 Geo. 2. c. 19. a provision like that for the rector of *St. Mary le Strand* is made for the rector of the new church near *Milbank Westminster*, over and above fees and perquisites, payable quarterly in lieu of tithes, &c. subject to some deductions to the present curate. *Vide* the statute. Millbank.

24. By the statute 1 Geo. 2. c. 10. three thousand pounds, *Spittlefields*, and one hundred and twenty-five pounds per annum, is settled on the rector of the new church in *Spittlefields*, &c. *Vide* the statute.

25. By

Stepney.

25. By the stat. 2 *Geo. 2. c. 30.* the like provision is made for the rector of the new church of *Wapping, Stepney.* *Vide the statute.*

St. Mary Stratford Bow.

26. The statute 3 *Geo. 2. c. 3.* provides for the rector of the parish of *St. Mary Stratford Bow* in *Middlesex*, viz. three thousand five hundred pounds, to be laid out in the purchase of lands, &c. and forty pounds a year to be raised by the churchwardens upon pews, &c. *Vide the act.*

Limehouse.

27. By statute 3 *Geo. 2. c. 17.* a provision of three thousand five hundred pounds, and sixty pounds *per annum* is appointed for the rector of the new church at *Limehouse.* *Vide the statute.*

Bloomsbury.

28. By statute 3 *Geo. 2. c. 19.* the interest of the sum of three thousand pounds, and one thousand two hundred and fifty pounds, to be raised by the parishioners, is allotted for the rector of the new church near *Bloomsbury* market. *Vide the act.*

Deptford.

29. By statute 3 *Geo. 2. c. 23.* the sum of three thousand five hundred pounds, and seventy pounds *per annum*, payable by the churchwardens, &c. is ordered for the rector of the new parish of *St. Nicholas Deptford*, in the counties of *Kent* and *Surry.* *Vide the act.*

Horshlydown.

30. By statute 6 *Geo. 2. c. 11.* the sum of three thousand five hundred pounds is to be laid out in lands, &c. for a provision for the rector of the new church of *Horshlydown* in the borough of *Southwark* in *Surry*, and sixty pounds *per annum* to be raised on the parishioners. *Vide the act.*

Tiverton.

31. By statute 6 *Geo. 2. c. 19.* a chapel in *Tiverton* in *Devonshire* is made a perpetual cure, and sixty pounds *per annum* provided for the ministers. *Vide the act.*

Old-street.

32. And by statute 6 *Geo. 2. c. 21.* a provision of three thousand five hundred pounds, to be laid out in lands, &c. is made for the rector of the new church near *Old-street* in the parish of *St. Giles, Cripplegate*, and that part of the said parish, which is called the lordship part, is made a distinct parish, and one hundred and twenty pounds *per annum* is also provided for the rector, chargeable on the parish, and an house is to be erected for his habitation. *Vide the act.*

2 Inst. 643.
11 Co. 49.
Hutl. 27.

33. What things are titheable, and what not, will appear from the following LIST.

A List of what Things are titheable, and what not.

Acorns, masts, or pannage, if severed and sold; not if they drop, and the hogs eat them. But if severed and given to swine, the tenth of the value is due.

After-math, not, unless by custom.

2 Inst. 652.
Danv. Abr.

Dismes 589. *Contra* 1 Roll. Abr. 640.

2 Inst. 621, 652.
Danv. Abr. 590.

After-pasture, not, unless by custom.

Agistment

Agistment of barren cattle upon lands which pay not other *Danv. Abr. 600,*
the that year; nor the cattle profitable to the parson by milk, *601, 614.*
ool, or labour. Custom or prescription often adjust the pay- *Contra F. N. B.*
ent. This is to be understood as to labour, &c. in the same *53.*
rith. *Scoles v. Lowther, 1 Ld. Raym. 129, 130.* *Agistment*
de jure titheable, therefore an hundred, &c. cannot prescribe
non decimando with respect to it, as they may with respect to
ood. *Hicks v. Woodson, 1 Ld. Raym. 137.* and afterwards

35.

Agreement for tithes by the parson does not bind his successor.

Alders, though above twenty years old; because not timber. *2 Cro. 199.*

Asp. not, if above twenty years growth. *2 Inst. 643.*

Asp. not in countries where used for timber, if above twenty *2 Inst. 643.*
ars growth;

Barley. See *grain.*

Bark, root, and germins, growing upon the ancient stock, *11 Co. 49.*
t, if the tree was timber. *2 Inst. 643.*

Barren land, heath, or waste ground, not; unless barren by ac- *2 Inst. 654, 656.*
ent or ill husbandry. But if naturally barren, and improved *1 Cro. 475.*

husbandry, 'tis free of corn tithe for seven years, by stat. 2 &
Ed. 6. c. 13. but not wool, &c. which it formerly paid by
tom. See at the end of this chapter.

Bauks, or head lands, not, if only large enough for turning *2 Inst. 652.*
plow; otherwise of larger head-lands. *1 Rol. Abr. 646.*

Beech, except when used for timber, by stat. 45 *E. 3. c. 3.* *Danv. 589.*

Bees, by the tenth weight and measure of wax and honey; *3 Cro. 404, 559.*
t by the tenth swarm. *F. N. B. 51.*

Beans. See *Grain.*

Birch, the same as *alders* above. *1 Cro. 1.*

Bricks, not, they not being an increase, but the land itself. *2 Inst. 651.*

Broom, unless burnt in the occupier's house of husbandry in *1 Cro. 1.*
parish, or discharged by custom. *Danv. 597.*

Calves, when weaned and able to live like the dam. The *Raym. 277.*
ment may be directed by custom; a tenth of the price for
ich sold may be a good custom.

Cattle, feeding upon wastes where the bounds of parishes are *2 Roll. Abr.*
known, to the parson where the owner dwells: But not, if *646, 647.*

ot for plough or pail. See *Agistment.*

Chalk. The same as *Bricks*, above.

Cheese, by custom only where tithe is not paid of the milk. *1 Cro. 609.*
1 Rol. Abr. 651.

Cherry trees, unless where used for timber. *2 Roll. 83.*

Chickens, not, where tithe eggs are paid. *1 Roll. Abr. 642.*

y. } The same as *Bricks*, above.
ls. }

Colts, as *Calves* above.

Conies, by custom, if sold; not for those spent in the house. *Danv. 583.*

Corn of all sorts; and the parishioners are to reap and bind it, *1 Rol. Abr. 644.*

otherwise prepare it for carrying home according to the hus- *1 Sid. 283.*
bandry *2 Vent' 48.*

- bandry used in that country. And if the parishioner will not sow his land, the parson may have his action against him for his due.
- Cowes*, by their milk and calves.
- Deer*, not, unless by custom; being *feræ naturæ*.
- Dotards*, i. e. decayed trees, not; having been once privileged. See *Wood*.
- Doves*. See *Pigeons*.
- Eggs*; not, when the chickens tithed.
- Elm*, as *Ash* above.
- Fallow Ground*, not; unless kept for several years together beyond the course of husbandry.
- Fern*, not.
- Fens*, when drained.
- Fish* taken in the sea by custom; the like in common rivers; but in ponds and private rivers a predial tithe.
- Flax*, a small tithe; and payable by statute at 5 s. per acre, by 11 & 12 W. c. 16. and see 6 Ann. c. 28. 1 G. 1. c. 26. below §. 42.
- Fleeces*. See *Wool*.
- Forest*, in the hands of the king, not; otherwise, if in the hands of a subject, or disafforested; and being within a parish.
- Fowls* tame, to pay according to custom, either in eggs or young; but not in both.
- Fruit*, as apples, &c.
- Fruit-trees*, not; if they had paid tithe of fruit that year before cut down.
- Fuel* spent in the house, not.
- Furzes*, as *Fuel*.
- Gardens*, which include herbs and plants.
- Geese*. See *Fowls*.
- Grain*, according to the custom of the place, but common by the tenth shock, sheaf, or cock.
- Grass* mowed, the manner is regulated by custom; but cut, and quickly after given to feed the cattle used in tillage where they have not sufficient pasture, not titheable.
- Gravel*. As *Bricks*, above.
- Hay*, at such time in the making as has been customary in the parish; or even by measuring out the tenth part of the grass growing.
- Hazle*, as *Beech*.
- Head-lands*. See *Barwks*.
- Heath*. See *Barren lands*.
- Hemp*, as *Flax*.
- Herbage*. See *Agistment*: not, where land had corn tithed that year.
- Holly*, as *Beech*.
- Honey*. See *Bees*.
- Hops*, there can be no *modus* for them, because but lately come into England. The hop-polls not titheable. See below §. 42.

Horses. See *Agistment, Grass.*

Houses, in *London*, only by statutes 37 H. 8. c. 12. 23 C. 2. 11 Co. 16. c. 15. and in some other cities and boroughs by custom. 2. if in lieu of land on which they are built in country places. See 1 Sid. 283, 443. 2 Inst. 659, 660. Hob. 10.

2 & 3 Ed. 6. c. 13.

Kids, as *Calves.*

Lambs, as *Calves.* But there is a variety of customs concerning this tithe; and the farmer must not attempt to defraud the custom. 1 Roll. Abr. 652. 3 Cro. 403.

Lead. See *Mines.*

Loppings; but not of timber-trees. See *Wood.*

Maple, as *Beech.*

Masts, as *Acorns.*

Milk, where no tithe paid of cheese. Custom governs here; to be brought, viz. every tenth meal, to the parson's house, unless there be another custom. But milk for the pail, i. e. for the family in the parish, is not titheable; otherwise if carried into another parish, though spent in the family. *Scoles v. Lowther*, 1 Ld. Raym. 129.

Mills, for corn, the tenth toll-dish. Other mills, as paper-mills, not, unless by custom; nor corn-mills erected before 9 E. 2. or so presumed to be, as being erected before the memory of man. But 2. Whether corn-mills a personal tithe, and charges to be deducted; the custom is the rule. See below, §. 40.

Mines, only by custom; not being an annual increase. See below, §. 39. 2 Inst. 551. F. N. B. 53.

Modus, of this before; and afterwards, §. 40, 41, 43.

Mortuaries are not tithes, but due by custom only; and settled by stat. 21 H. 8. c. 6. to be paid in money at the rates there mentioned; and see stat. 12 Ann. sess. 2. c. 6. for the dioceses of *Bangor, Landaff, St. David's*, and *St. Asaph.*

Nag, not; being only rid by the master of the husbandry.

Nurseries of trees to be sold.

Oaks, which are or may be timber, not.

Oblations, Obventions, or Offerings, are in the nature of personal tithes; and are payable, according to custom, to the parson or vicar; where the party dwells, occasionally, as at marriage, burial, &c. or at a stated time, as at *Easter*, &c. Vide post. §. 34.

Orchards, (besides tithe of the fruit) pay for the grass, or if sown with grain; but not of the fruit-trees, if they have born and paid that year.

Parks, for the deer, and for the herbage, by custom. If converted into tillage, then pay as other land.

Partridges and *Pheasants*, though tame, and breed; not. Danv. 583.

Pease, for sale, or to feed hogs, &c. not green pease to eat in the house. 2 Roll. Abr. 647.

Pensions, by composition before the ordinary, in lieu of tithes; or by prescription.

- Pigeons*, if sold; not so of common right, if spent in the house; but may be by custom.
- Pigs*, as *Calves*.
- Pits*, as *Bricks*.
- Plants*. See *Nurseries*.
- Pollards*, or trees usually lopped, pay at any age.
- Quarries*, as *Bricks*.
- Rakings* involuntarily; not fraudulently scattered.
- Rate Tithe*, is a payment by custom for feeding cattle.
- Roots* of timber trees, not; nor of other trees, unless by custom, if the wood pay tithe.
- Saffron*, a small tithe.
- Salt*, not; unless by custom.
- Sheep*. See *Lamb* and *Wool*. Not for their feeding if eaten in the house.
- Slate*, not; unless by custom.
- Stubble*, not.
- Sylva Cædua*. See *Wood*.
- Tares* or *Vetches*; but not, if cut down green, and given to the beasts of the plough, there not being other sufficient pasture.
- Tile*, as *Bricks*.
- Trees*. See *Nurseries*.
- Turf*, as *Bricks*.
- Turkies*, not; because *feræ naturæ*. Q. See below, §. 40.
- Venison*. See *Deer*.
- Underwood*, whether cut down or digged up by the roots; except sufficient fuel for the house.
- Warren*. See *Conies*.
- Waste* for the cattle which feed there. See *Agistment*, *Herbage*, and 2 E. 6. c. 13. §. 3.
- Wax*. See *Bees*.
- Willows*, as *Beech*.
- Wood*.
- Wood*, a great tithe, payable when cut; except timber of or above twenty years growth, by stat. 45 E. 3. c. 3. or as some say if under, if it may be timber, *hedgebote*, *ploughbote*, and *housebote*, are also tithe free. And a county, or great part of a county (as the wilds of *Kent* and *Sussex*) may prescribe to be discharged of this tithe. It is set out, standing or felled as the custom directs. See below, §. 35.
- Wool*, a mixed and small tithe; it is due of all the wool, except what is cut off to save the sheep from dirt or vermin. No *rate-tithe* is payable for their feeding under thirty days. Upon the whole, observe, that the manner of payment of these and

most other tithes is for the most part governed by the custom of every parish. Barren land inclosed, within the meaning of stat. Ed. 6. to be exempted from payment of tithes, must be such land as is barren *suapte natura*, and not land upon which wood, or the like grew before, which is afterwards burnt, and the land converted into tillage. By *Powel J. Anon.* 2 *Ld. Raym.* 991.

34. A custom was alledged, that every inhabitant keeping an house, and having a family in *W.* and having a child born in that parish, at the time of churching the mother of the child, or at the usual time after her delivery when she should be churched, have time out of mind paid ten pence to the vicar, &c. is a void custom; 1. Because uncertain as to the time when the woman should be churched. 2. Because unreasonable, because it obliged the husband to pay if the woman was not churched at all, or if she went out of the parish, or died before the time of churching. *Naylor, qui tam, v. Scott,* 2 *Ld. Raym.* 1558.

35. In attachment upon prohibition the plaintiff declared, that there is, and time out of mind, &c. hath been a custom within the hundred of *Huntsittle* in the parish of *Huntsbitch* in *Somersetshire*, that every occupier of land within the hundred should be discharged of tithes of agistment of barren cattle, not employed in the plough, nor for the pail; that the plaintiff was an inhabitant for five years passed, and yet is, within the hundred, and occupies land there, and was and yet is possessed of divers barren cattle, for the tithes of which (notwithstanding the said custom) the defendant libelled against the plaintiff in the spiritual court, &c. and he declares also upon two *modus's* for tithes of lambs, &c. and that the defendant sued for tithes of them: the defendant traversed the *modus's* and the custom; and verdict for all was given for the plaintiff. And upon motion in arrest of judgment by serjeant *Gould*, that this custom was void, the question was, whether a hundred may prescribe generally in *non decimando*, as in this case, to be free from the payment of tithes or herbage or agistment of cattle. And after several arguments at the bar it was resolved, 1. That in things titheable by custom only, and not *de jure*, a county or hundred might prescribe in *non decimando* generally; for in that case the county, &c. is discharged without a custom to the contrary; so that it is but to assist upon the old right, against which the custom has not prevailed. See 13 *Co.* 12. 1 *Roll. Abr.* 653, 654. 1 *Roll. Rep.* 2. 2 *Bulst.* 185. *March* 25. But for things which are titheable *de jure*, a county or hundred could not prescribe in *non decimando*, no more than a particular person; for it would be absurd to say, that a hundred shall prescribe in *non decimando*, where the particular persons, of which it consists, could not. They resolved, that wood is not *de jure* titheable, because it does not renew annually. *Seld.* 237. 13 *Co.* 13. where it is said, that in libels in the spiritual court for tithes of wood they

alledge a custom; (but note the practice of the spiritual court was affirmed at this day to be otherwise; but the court did not regard that; for *Holt* chief justice said, that they made stones, gravel, and all things titheable.) And therefore the case in *March* 25. 1 *Roll. Abr.* 643-4. may be good law, for the case there is of wood. But this principal case is of agistment of cattle, which is *de jure* titheable, as being recompenced by the grass, hay, &c. which otherwise would yield tithes; and therefore the custom is void. And the court did not only arrest the judgment, but caused this entry to be made, *quia apparet curia domini regis, &c. quod custumia prædicta, &c. nullius est vigoris, ideo consultatio, &c.* *Hicks v. Woodson*, 1 *R. Raym.* 137. *Carth.* 392. *Salk.* 655. *Skin.* 560. *Comb.* 403. 4 *Mod.* 336. *Cases B. R.* 111.

36. If the executor of a parson brings a bill for tithes, he need not offer to accept the single value, he not being intitled by the statute of *Edward 6.* to the treble value. 1 *Vern.* 60. *Anonymus.*

37. If *A.* lives in the diocese of *B.* and subtracts tithes in the diocese of *C.* he shall be sued in the diocese of *C.* and not in the diocese of *B.* where he lives; notwithstanding stat. 23 *H. 8. cap. 9.* against citing out of the diocese: For by stat. 32 *H. 8. cap. 7.* the subtraction of tithes is made; for by the words of the act, the party offending shall and may be cited before the ecclesiastical judge of the place where such wrong shall be done. *Machin v. Moulton*, 1 *Ld. Raym.* 452, 534. 2 *Lutw.* 105. *Salk.* 549. 5 *Mod.* 450. *Carth.* 276. *Cases B. R.* 252.

38. To a bill in the exchequer for a discovery of tithes by lessee of a parson, the defendant pleaded stat. 13 *Eliz. c. 20.* against non-residence, in bar. The plea need not shew, 1. That he was not justifiably absent: 2. The absence need not be continual absence of 80 days at one time; for, this construction would defeat the statute, and the case in 1 *Bulst.* 111. is not law. 3. The plea is good as to the discovery, as well as to the relief. 4. The year is to be 365 days without beginning at 25th of *March.* *Gilb.* 228, &c. *Quilter v. Mussendine.*

39. Tithe oar not due, but by particular custom. 2 *Vern.* 46. *Buxton v. Hutchinson.* The plaintiff being vicar of the parish of *Wirksworth* in *Darbyshire*, brought a *subpæna* in the nature of a *scire facias* against the defendants, to enforce the performance of a decree made 5 *Car. 1.* by which (among other things) it was decreed, that all the miners within the said parish, as well for the time being, as to come, should pay the tenth dish of lead oar cleansed, &c. to the vicar of the said parish for the time being, for tithes, &c. the defendants appeared to the *scire facias*, and set forth they claimed not in privity under any of the parties to that decree, and that some of them were seised of mines not then found out or opened, and that

there had not been any performance of the decree, and other matters in avoidance. *Per Cur'*: The decree extends to all miners within the parish for the time being, or to come; so the defendants are within the letter, and expressly bound by the decree, and as long as the decree stands in force must obey. *Browne v. Booth*, 2 Vern. 184. *Eq. Ab.* 164. p. 5.

40. In the bill for tithes in kind, the defendant insisted on several *modus's*, one of which was, that the inhabitants of such a tenement, with the lands usually enjoyed therewith, had been accustomed to pay such a *modus* for tithe-corn. *Cur'*: This is quite uncertain; the house may fall down, or be uninhabited, and then no *modus* will be payable; also nothing can be more uncertain than lands usually enjoyed with the tenement, since the lands let with a farm-house may probably be often shifted: 2dly, Tithes being demanded of turkies, it was objected, that in *Moor* 599. (*Hugton v. Prince*) it was said, that turkies were things *feræ naturæ*, and not titheable, any more than partridges, and that turkies were not brought hither from beyond sea before queen *Elizabeth's* time. *Cur'*: I cannot see but that turkies are birds as tame as hens or other poultry, and therefore must pay tithes; it is true, if tithes be once paid of the eggs, there can be no demand made a second time in respect of the chicken hatched afterwards; 3dly, There was another demand made by the bill of the tithe of a corn-mill, and it was insisted, that every 10th toll-dish was due. 1 *Show.* 281. (4 *Mod.* 45. *Carth.* 215.) *Gumble v. Falkingham*. But it was replied, that this matter was determined in the case of *Chamberlain v. Kneate*, in the house of lords, upon an appeal from a decree of the court of exchequer in 1706. *Abr. Ca. in eq.* 366. p. 3. where the bill was brought for the tithes of a malt mill in *Tiverton* in *Devonshire*, and where the lords determined, with the assistance of eight judges (whereof *Holt C. J.* was one) that mills were titheable, but that the same was a personal tithe, and so ought to be paid out of the clear gain, after all manner of charges and expences deducted; upon which authority the master of the rolls decreed the mill in question to pay tithes, but that they should be only paid as a personal tithe. *Note*; In this case it was said and admitted, that in a bill brought by a parson for tithes, though the right thereto be ever so plain, yet in the exchequer the decree is not, that the defendant shall pay tithes for the future, but that he shall account for and pay what tithe is due to the time of bringing the bill; but in the court of chancery it is to the time of the *decree. Likewise in the exchequer, where an infant is party and his interest is concerned,

* *Quære if this be the established practice of the court of chancery, or done only of late in some few instances.*

the court does not allow of an order to examine a witness *in voce* to prove a deed or exhibit, but the witness must be examined in the office upon interrogatories. 2 Wms. 462, 463, 464. *Carleton v. Brightwell*. Note; It was held in chancery that a *modus* that every occupier of land within the parish of A. living out of the parish, shall pay a penny an acre for all pasture land within the parish; but if he lives within the parish, to pay tithes in kind; was a good *modus*. It was also held every *modus* must be certain, or else it is void, and no length of time will make it good. Thus a *modus* to pay a penny *per ann.* or thereabouts, for every acre, void. *Modus* to pay 12 d. *per acre* for every acre of up-land, and 6 d. for every acre of marsh land, good. And it is not necessary to shew a *modus* had a reasonable commencement, for it might at first be so, and not now capable of being shewn at this great distance of time; and it is sufficient that the parson, patron and ordinary might at first make this agreement, and bind the succeeding parsons, and though the instrument of the agreement be lost, yet the *modus* will be good. 2 Wms. 565, &c. *Chapman & al' v. Monson & contra*.

41. In a bill to establish a *modus*, it was set forth to be payable on or about the 25th day of April, &c. this is a void *modus*; for it must be payable on a certain day. But the plaintiff was allowed to amend his bill on payment of costs; this was after answer, and I suppose at hearing. 1 Mo. ca. in law and eq. 375. *Blacket v. Finny*.

42. Mich. 11 Geo. 1. held in the court of chancery, tithes hay ought to be paid in grass cocks. 2 Mo. ca. in law and eq. 118. *Smithson & al. v. Dodson*. Clover-seed in its nature is a small tithe, resolved in the exchequer. Hill 12 Geo. 2. *Wallis v. Paine and Underhill*, Comyns 633, &c. A question was whether the tithe of flax be a great or small tithe. Holt C. J. was of opinion that they are great tithes which are sown in the common field, and they are small tithes which are sown in a garden or orchard. Dolben and Eyre justices held, tithes shall be determined according to the nature of the thing titheable, and not according to the place where they grow. And at another day, Holt being absent, Dolben, Gregory, and Eyres adjudged, that they were small tithes; 26 acres only in a parish, which consists of 1200, being sown by several persons with flax; but possibly it may be adjudged a great tithe if the greater part of the parish be sown with it. *Wharton v. Lisle*, Skin. 341, 356. 3 Lev. 365. 4 Mod. 183. Comb. 201, 209. Carth. 263. *Caslet B. R.* 41. 2 D. A. 591. p. 5. Vid. ant. §. 32. Tit. Flax.

43. Motion for a prohibition to be directed to the consistory court of the bishop of Worcester, to stay proceedings in a suit there for tithes of hops, upon suggestion of a *modus* time whereof, &c. there used, that if a parson send a servant, &c. to pull *aliquam partem lupularum*, he shall have the tithes of them, &c. upon

upon which a rule was made to shew cause why a prohibition should not be granted. And now it was shewed for cause against the prohibition. 1. The custom is void for uncertainty; for it does not appear how much hops ought to be pulled, &c. 2. That is an ill custom, because it is no benefit at all to the parson, but gives him more pains than the law requires, to intitle him to that, which by law he ought to have in the same manner without such pains; of which opinion was the whole court, and therefore the rule was discharged. 1 L. Raym. 504, 505. *Stedman v. Lye.*

44. A prohibition was granted to a suit for tithes of cows, lves, herbage, and pasture, upon suggestion of a custom, that every parishioner from the time whereof, &c. had used to pay for every cow having a calf 1 d. for every cow not having a calf 1 d. $\frac{1}{2}$ as far as five cows; and for five cows 1 s. and 3 d. and for six cows 2 s. 6 d. and for ten cows 2 s. 8 d. *in plena satisfactione omnium decimarum vaccarum et vitulorum, et herbagii, p'sturæ.* The plaintiff declared in attachment upon this prohibition, and upon traverse of the custom a verdict was found for the plaintiff in the prohibition; upon which *Lutwyche* servant moved in arrest of judgment in *Easter* term last past: That this custom was void, for it is laid to be a discharge of tithes of all cows, which it is not, for nothing is laid for the tithes of the seventh, eighth, and ninth cows, and payment for the sixth cannot be payment for the seventh, &c. 2. This cannot be a discharge of the tithes of herbage and agistment, for tithes of one thing cannot be a discharge of tithes of another, and tithes are payable of both; then since the custom is laid in-entire, it is void in the whole, 3 Cro. 446, 475. and of this opinion was the whole court; and therefore judgment was arrested, and a consultation granted, unless cause should be shewn this Trinity term: At which time serjeant *Levinz* moved, that the prohibition should stand, because it appears here that there is a custom, and then the spiritual court has no jurisdiction to proceed; and therefore variance in case of a *modus* will not hurt, but the prohibition shall stand, because it appears that the spiritual court has not jurisdiction; and when they have not jurisdiction the common pleas cannot allow them to proceed. *Sed non allocatur*; for *per curiam* the question is here, whether the *modus* be good or void; if the *modus* is void the spiritual court has jurisdiction, and the *modus* is void for the reasons given before. Then *Levinz* moved, that though the custom was void in part, yet it was good for one, two, three, four, and five cows, and therefore he prayed, that the consultation should be granted only for that part which is void, and that the prohibition should stand for the residue; and by this he said, that a man might have made a *modus* for five cows, and then for the residue he shall pay tithes in *specie*. And the court agreed the case put by

by him, but said, that in the principal case the custom was to tire for all cows, and therefore if it was ill in part it was ill in whole; and a consultation was granted as to all. In this case *Treby C. J.* said, that tithes are not payable for aftermowth *jure*, and therefore 'tis but form to lay a custom to be discharged of tithes of aftermowth in consideration of making the former mowing into hay; for tithes are payable only of things *seu in anno renovantibus*. See *contra* 1 *Roll. Abr.* 640. *Norton Parson of Stanfield's case*. 1 *Ld. Raym.* 242, 243. *Norton Brigs*. A custom was suggested, that every inhabitant in the parish who kept cows there, had used time out of mind to set out the whole meal of milk upon the 9th day of May at night and upon the 10th day of May in the morning, and so upon each 9th day then next following, until one lamb yeaned in the next year following should be heard to bleat there; and that the vicar for the time being had used to send a servant to bring him the milk set out in such manner. By the whole court *B. R.* the custom is ill, and it is a plain *non decimando*. *Hill Vaux*, 1 *Ld. Raym.* 358, 359. A *modus* was suggested, that in consideration that they used to pay the 10th lamb of all lambs dropped in their parish, they used to be discharged of the tithes of all the lambs fed there, &c. By *Holt C. J.* the 10th lamb is due of common right; this custom is no ground for prohibition; it is not a *modus in non decimando*; it is no *modus* at all: Rule for prohibition was discharged. *Selby v. Clarke* 1 *Ld. Raym.* 677.

45. Tithe was decreed in the exchequer for the depasturing of sheep on turnips remaining on the ground unsevered: The defendant had paid tithe wool, and after sheering time fed his sheep with turnips, by which they were bettered 5 s. per sheep. *Gilb.* 231. *Coleman*, impropiator of *Thompson* in *Norfolk* *Barker*. A custom was suggested, that if any parishioner fed his sheep with his grass until June and August, that then he might mow the coarse grass with which they fed their sheep in the winter, whereby the parson had *uberiores decimas* of the sheep: it is a void custom, by the court of *B. R.* *Selby v. Clarke* 1 *Ld. Raym.* 677.

46. By stat. 7 *Gul.* 3. a remedy is provided for the recovery of tithes and church-rates, where any quaker should refuse to pay the same; then it is enacted, that such remedy shall be intended, and the like remedy shall and may be had and used against any quaker or quakers for the recovering of any tithes or rates, or any customary, or other rights, dues, or payments belonging to any church or chapel, which of right by law or custom ought to be paid for the stipend or maintenance of a minister or curate officiating in any church or chapel; and any two or more justices of the peace of the same county or place other than such justice of the peace as is patron of any church

church or chapel, or any ways interested in the said tithes, upon complaint of any parson, vicar, curate, farmer, or proprietor of such tithes, or any churchwarden or chapelwarden, or other person who ought to have, receive, or collect any such tithes, rates, dues, or payments, as aforesaid, are authorised and required to summon in writing, under their hands and seals, by reasonable warning, such quaker or quakers, against whom such complaints shall be made; and after his or their appearance, or upon default of appearance, the said warning or summons being moved before them upon oath, to proceed to hear and determine the said complaint, and to make such order therein, as in the said act is limited or directed; and also to order such costs and charges, as they shall think reasonable, not exceeding ten shillings, as upon the merits of the cause shall appear just; which order shall and may be so executed, and on such appeal may be reversed or affirmed by the general quarter sessions of the county or place, with such costs and remedy for the same, and shall not be removed into any other court, unless the title of such tithes, dues, or payments shall be in question, in like manner as in and by the same act is limited or provided.

47. To a bill by lessee of a parson for tithes against a parson, the defendant pleaded stat. 13 *Eliz.* 20. by which it was enacted, that no lease of any benefice or ecclesiastical promotion with cure; or any part thereof, shall endure any longer than while the lessor shall be ordinarily resident, and serving the cure of such benefice without absence above 80 days in any one year; but that such lease immediately upon such absence shall cease and be void, &c. and that the lessor was absent above 80 days in such year, whereby his lease to the plaintiff did become void; and the plea being admitted to be heard according to the rules of court, no one then appeared to defend or maintain the title of the plaintiff; for it was said by the counsel for the defendant, that such plea was formerly allowed; that it was allowed 5th of February, *Hill.* 12 *Geo.* between *Mills* and *Etheridge*. That it was allowed also *Pasch.* 12 *Geo.* between *Quinter* and *Messenden*, and between *Quinter* and *Downes*; that the sole question in those cases was, if the defendant should not answer to the quantities and values alledged by the bill at the same time he tenders his plea, so as where the defendant insists on a *modus* as a discharge of his payment of tithes in *specie*, yet the defendant ought to answer to the quantity and value of the tithes charged in the bill; otherwise if it were afterwards found there was no such *modus*, the plaintiff cannot have a decree against the defendant, because it does not appear how much is due by him for his tithes to the plaintiff. But it was then resolved by the court, that upon such plea of non-residence of the lessor, the defendant need not answer to the quantities and values, for such plea goes to the right and title of the plaintiff; but

but where a *modus* is alledged, that admits the title of the plaintiff to take tithes of the defendant, but only goes to the manner of payment, if tithes should be paid in *specie* or not. And upon all those authorities alledged, the plea in the present case was allowed. *Comyns* 392, 393. *Bokenham* and *Bentfield*, in the exchequer.

C H A P. XIII.

Other Duties of Incumbents by Statutes.

What acts of parliament must be read by incumbents.

1. **B**Y several acts of parliament, an incumbent is obliged to read the act of uniformity of 5 & 6 Ed. 6. c. 1. once a year; the act for observing the fifth of November, 3 Jac. 1. c. 1. after the morning service for that day; the act for observing the 29th of May, 12 Car. 2. c. 14. the Lord's day next before; the act against swearing, 6 & 7 W. 3. c. 11. on the Sunday next after the 24th of June, 29th of September, 25th of December, and 25th of March, under pain of twenty shillings. Also the whole book of canons 1603, is to be read once every year, upon some Sunday or holiday in the afternoon before divine service, dividing the same in such sort, that the one half may be read the one day, and the other another day. The stat. 13 & 14 Cha. 2. enacts, That in all places where the proper incumbent of any parsonage, &c. resides on his living, and keeps a curate, the incumbent himself (without some lawful impediment) shall once (at least) in every month, openly and publickly, read the common prayers and service, and (if there be occasion) administer each of the sacraments and other rites of the church, in the parish church or chapel of his benefice, on pain of 5 *l.* to be forfeited to the use of the poor of the parish for every offence, on conviction before two justices of the county on confession, or oath of two witnesses.

Penalty of parsons marrying people without licence.

2. By stat. 7 & 8 W. 3. c. 35. all parsons are prohibited to marry people, or suffer them to be married in their churches or chapels, exempt or not exempt, or at any other place whatsoever, without the publication of the banns, &c. or without licence. The penalty is one hundred pounds for each offence, to be recovered by action of debt, bill, plaint, or information; one moiety to the king, the other to the informer; and the man thus married forfeits ten pounds to any person who will inform, &c. and every clerk or sexton, knowingly assisting at such marriage, forfeits five pounds, to be recovered with costs as aforesaid.

, 3. By

By statute 30 *Car.* 2. c. 3. the minister of every parish is ^{Parsons duty} keep a register of the burials and affidavits of persons buried ^{about burials,} woollen. These affidavits are to be brought to the minister within eight days after the burial; if not, the minister must enter a memorandum of the default, and of the time when he gave notice thereof to the parish officers; which notice must be given in writing, under the hand of the minister; and this may be done at any time; but the best way is soon after the eight days are expired. The minister making default in any of these particulars, forfeits 5 *l.* The affidavit must be taken by a justice of the peace, mayor, or such officer in the parish where the body was buried; and if there is none in that parish, then by a justice in the county, except in that parish where the corpse was buried. He who takes the affidavit must set his hand to it, and it must be attested by two witnesses, who were present at taking it.

In every parish there should be also a parish register, which ^{Parish registers} parchment book, in which all the christnings, marriages and ^{to be kept.} burials are recorded. This was first ordered by the vicegerent *Howell*, in the 30th year of *k. Henry VIII.* and since increased by a canon made 1603, in the time of king *James I.* by which it is required, that a chest should be provided at the charge of the parish, with three locks, and as many keys, for the minister and each of the churchwardens, so that neither of them should take out the book but when they were all present; and when a page is full written, the minister and each of the churchwardens shall subscribe their names; and that the churchwardens shall every year, in *April*, transmit the names of all persons christened, married, and buried, to the bishop or his chancellor, and the days and month in which it was subscribed to them; and if either of them make default, he might be cited to the bishop or his chancellor, and proceeded against as a contemner of the canon. And so great credit is given to this register, that a copy from it, duly attested, is allowed to be good evidence in the common law courts, and the falsifying it is punishable. One was fined 200 *l.* for forging the entry of a marriage. 2 *Sid.* 71.

I cannot leave this head, without cautioning ministers as well as churchwardens, not to suffer any to be entered and recorded in the said parish register, but such only as have been baptized, married, or buried within their respective parishes, according to the order of the church of *England.* For a practice which of late been admitted in some places, to receive certificates from dissenting ministers, of baptisms administered by them, and to enter them in the parish register; and this is done for the sake of a twelve penny fee to the minister for that purpose. Whoever is guilty of this vile practice, betrays both the church and his trust, and by making himself a forger of false records,

Ages for entering
into holy orders.

Donatives:

* 1 Inst. 344. a.
Yelverton 61.

Deacons.

ords, exposes himself to penalties which would disgrace, if ruin him, all his life after, were they duly executed upon him. 6. A man is to be ordained *Deacon* at twenty-three years of age, and afterwards a *Priest* at twenty-four. Not that was ever accounted of absolute necessity, there should be the interval of a year between the conferring these orders; for by canon 32, if a bishop shall find cause to the contrary, a deacon may be admitted into holy orders within that time, but regularly it ought to be a year: And with great reason; because that time it may appear whether the person is fit to have the cure of souls intirely committed to his charge. But by the canon 'tis expressly provided, that a bishop shall not make the same person both a deacon and a priest in one day.

7. Having mentioned a donative, it may be proper here to describe it. It is a church exempted from the power of the ordinary, except in certain cases of oaths, subscriptions, &c. joined by statute. The incumbent is put into possession by gift in writing of the patron, without presentation, institution or induction; there can be no lapse of it*, except it be specially provided for in the foundation; but the bishop may compel the patron by ecclesiastical censures to nominate a clerk. The patron generally is to visit, and not the bishop, except (by 1 G. 1. c. 10.) where the donative is augmented by queen Anne's bounty. If the true patron of a donative once present, and a clerk is admitted and instituted, it becomes a church prescriptive for ever. But it was held by Holt C. J. and Powell J. that though a presentation may destroy an impropriation, yet it could not destroy a donative, the creation being by letters patent, whereby lands were settled to the parson and his successors and he to come in by donation. *Ladd v. Widows*, 2 Salk. 54. But note; the parson of a donative is liable to the ecclesiastical jurisdiction, as he is a member of the ecclesiastical body, for personal offences; though for matters relating to the church he is exempt, and therefore the spiritual court cannot deprive him, but they may censure him for drunkenness, preaching here, marrying without licence, &c. *Colefatt v. Newcomb*, 2 L. Raym. 1205, 1206.

8. As in the primitive times a deacon was to read the gospel so with us, his office consists in reading divine service, catechizing children, and baptizing infants, burying, marrying; before the act of uniformity he might be incumbent on a living with cure, but not since; and the very form of ordaining deacons expressly mentions that 'tis his office to assist the priest in the distribution of the holy communion. But I think the bare act of giving the cup to them without consecrating the wine, does not make him an offender within the statute of 13 & 14 Car. c. 4. Because the prohibition is, that no person shall presu-

consecrate and administer the sacrament, &c. Which words comprehend the whole solemnity of the communion.

9. I shall conclude this chapter with mentioning a word or Parochial library concerning parochial LIBRARIES. By a statute made 1713.

Ann. c. 14. it is provided that where there is a parochial library, every incumbent, before he shall be permitted to use the library, must enter into a bond to be approved by the proper ordinary, conditioned for the preservation of the library, and to observe the rules and orders belonging to the same. And if a book shall be taken away or detained, the incumbent or any other person, may bring an action of trover in the name of the proper ordinary, and shall recover treble damages with full costs; which damages shall be applied to the use of the library.

If a book be taken away, ordinary may bring action.

10. The said ordinary, his commissary, or his official, or the archdeacon, or his official, or surrogate, (if the said archdeacon is not incumbent of the place where the library is) may inquire in their visitations of the state of such library, and the ordinary may appoint any person to view it.

May inquire in his visitation.

11. And where a library is appropriated to the use of the incumbent, he must, within six months after his induction, make a new catalogue of all books in the library, and must sign the same, acknowledging the possession of such books; which catalogue he must deliver to the proper ordinary within the time aforesaid.

Incumbent must make a catalogue within six months.

12. And upon any vacancy, the library must be locked up by the churchwardens, or by a person appointed by the proper ordinary, or by the archdeacon, unless the place where such library is kept shall be used for the vestry, or otherwise for dispatch of business, and after that is done, the place is to be locked up.

On any vacancy library must be locked up.

13. And likewise a book shall be kept in the library for the entering of all benefactions, which the incumbent is to see fairly entered, and the ordinary is to make proper rules and orders, but not contrary to the order of the donor, which shall be entered in the said book.

A book for benefactions.

14. None of the books shall be alienable without the consent of the ordinary, and then only where there is a duplicate of such book; and if any book is taken away or lost, a justice of the peace may grant his warrant to search for the same; and if it is found, the justice shall immediately order it to be restored to the said library.

Books not alienable without consent of ordinary, &c.

15. But the library at Ryegate in Surrey, being constituted in another manner, is not included in the act.

Library at Ryegate excepted.

16. By the act (26 Geo. 2. c. 33.) for the better preventing of clandestine marriages, all marriages are to be either in pursuance of banns published, of a licence, or of a special licence. A marriage in pursuance of banns published must be solemnized in one of the parish churches or chapels, where such banns have been

Marriages.

Where to be solemnized.

Marriages void.

Seven days before publication of banns, notice in writing to be given to the parson, &c. of the parties names, place, and time of residence.

Manner, times, and place of publication of banns.

been published, and in no other place. A marriage in pursuance of a licence (except by special licence) must be solemnized in such parish church or publick chapel for which the licence may be granted by virtue of this act (for which see sect. 21.) And all marriages solemnized after 23 of *March* 1754. in any other place than a church or such publick chapel, unless by special licence, or that shall be solemnized without publication of banns, or licence of marriage from a person or persons having authority to grant the same, first had and obtained, shall be null and void to all intents and purposes whatsoever. And all marriages solemnized by licence after the 25 *March* 1754, where either of the parties, not being a widower or a widow, shall be under the age of 21 years, which shall be had without the consent of the father, guardian, &c. (see sect. 23.) shall be absolutely null and void to all intents and purposes whatsoever.

17. No parson, vicar, minister or curate, shall be obliged to publish the banns of matrimony between any persons whatsoever, unless the persons to be married shall, seven days at the least before the time required for the first publication of such banns respectively, deliver or cause to be delivered, to such parson, vicar, minister or curate, a notice in writing of their true christian and surnames, and of the house or houses of their respective abodes within such parish, chapelry, or extraparochial place as after-mentioned, and of the time during which they have dwelt, inhabited or lodged in such house or houses respectively.

18. All banns of matrimony shall be published in an audible manner, according to the form of words prescribed by the rubrick prefixed to the office of matrimony in the book of common prayer, upon three *Sundays* preceding the solemnization of marriage, during the time of morning service, or of evening service, if there be no morning service in the church or chapel, upon any of those *Sundays*, immediately after the second lesson, in the parish church, or in some publick chapel, in which publick chapel banns of matrimony have been usually published, or belonging to such parish or chapelry wherein the persons to be married shall dwell. If the persons to be married shall dwell in divers parishes or chapelries, the banns shall in like manner be published in the church or chapel, belonging to such parish or chapelry, wherein each of the said persons shall dwell. If both or either of the persons to be married shall dwell in any extraparochial place, (having no church or chapel wherein banns have been usually published) then the banns shall in like manner be published in the parish church or chapel belonging to some parish or chapelry adjoining to such extraparochial place. And in such case, the parson, vicar, minister or curate, publishing such banns, shall, in writing under his hand, certify the publication thereof, in such manner as if either of the persons to be married dwelt in such adjoining parish: And all other rules prescribed by the said rubrick,

brick, concerning the publication of banns, and the solemnization of matrimony, and not by this act altered, shall be duly observed. All parishes, where there shall be no parish church or chapel belonging thereto, or none wherein divine service shall be usually celebrated every Sunday, may be deemed extraparochial places, for the purposes of this act, but not for any other purpose.

19. No parson, &c. solemnizing marriages between persons, in or one of whom shall be under the age of 21 years, after banns published, shall be punishable by ecclesiastical censures for solemnizing such marriages without consent of parents or guardians, whose consent is required by law, unless such parson, &c. shall have notice of the dissent of such parents or guardians. And in case such parents or guardians, or one of them, shall openly and publickly declare, or cause to be declared, in the church or chapel, where the banns shall be so published, at the time of such publication, his, her, or their dissent to such marriage, such publication of banns shall be absolutely void.

Parson not punishable for marrying, after banns, an infant without consent of parents or guardian.

Unless he shall have notice of their dissent.

By their publickly declaring their dissent, the publication of banns void.

20. After the solemnization of any marriage, under a publication of banns, it shall not be necessary in support of such marriage, to give any proof of the actual dwelling of the parties in the respective parishes or chapelries wherein the banns of matrimony were published; nor shall any evidence be received to prove the contrary in any suit touching the validity of such marriage.

In support of marriage by banns, proof of actual dwelling of the parties not necessary.

Nor any proof to the contrary to be received.

21. No licence of marriage shall be granted by any archbishop, bishop, or other ordinary or person having authority to grant such licences, to solemnize any marriage in any other church or chapel, than in the parish church or publick chapel or belonging to the parish or chapelry, within which the usual place of abode of one of the persons to be married shall have been for the space of four weeks, immediately before the granting of such licence; or where both, or either of the parties to be married shall dwell in any extraparochial place having no church or chapel wherein banns have been usually published, then in the parish church or chapel belonging to some parish or chapelry adjoining to such extraparochial place, and in no other place whatever. (See before sect. 18. what shall be deemed an extraparochial place.) Nothing herein contained shall extend to deprive the archbishop of Canterbury and his successors, and his and their proper officers, of the right which hath hitherto been used, by virtue of the stat. 25 H. 8. c. 21. of granting special licences to marry at any convenient time or place.

No licence to be granted for marrying in any other church, &c. but of the parish, &c. within which the usual abode of one of the parties has been for four weeks before the licence.

Extraparochial places.

Special licences excepted.

22. Where any marriage is by licence, it shall not be necessary to give any proof that the usual place of abode of one of the parties, for the space of four weeks as aforesaid, was in the parish

In support of marriage by licence, proof of place of abode of one of the

parties not necessary.

Nor any proof to the contrary to be received.

Marriage by licence of an infant without consent of the father, &c. void.

Books in every parish to be provided for registering marriages and banns of marriage.

Entries to be signed by the parson, &c.

Marriages to be celebrated in the presence of two witnesses besides the minister.

parish or chapelry where the marriage was solemnized; nor shall any evidence be received to prove the contrary in any suit touching the validity of such marriage.

23. All marriages solemnized by licence, after 25 *March* 1754. where either of the parties, not being a widower or widow, shall be under the age of 21 years, which shall be had without the consent of the father of such of the parties so under age (if then living) first had, or if dead, of the guardian or guardians of the person of the party so under age, lawfully appointed, or one of them; and in case there shall be no such guardian or guardians, then of the mother (if living and unmarried); and if there shall be no mother living and unmarried, then of the guardian or guardians of the person appointed by the court of chancery, shall be absolutely null and void to all intents and purposes whatsoever. (But where the guardian or mother is *non compos mentis*, beyond sea, or refuses consent to a proper marriage, if the lord chancellor, &c. upon examination declares it to be a proper marriage, that shall be as effectual as if the guardian or mother had consented.)

24. On or before 25 *March* 1754. and from time to time afterwards as there shall be occasion, the churchwardens and chapelwardens of every parish or chapelry, shall provide proper books of vellum or good and durable paper, in which all marriages and banns of marriage respectively, there published or solemnized, shall be registred, and every page thereof shall be marked at the top, with the figure of the number of every such page, beginning at the second leaf with number one, and every leaf or page so numbered, shall be ruled with lines at proper and equal distances from each other, or as near as may be; and all banns and marriages published or celebrated in any church or chapel, or within any such parish or chapelry, shall be respectively entered, registred, printed or written upon, or as near as conveniently may be to such ruled lines, and shall be signed by the parson, vicar, minister and curate, or by some other person in his presence, and by his direction; and such entries shall be made as aforesaid, on or near such lines in successive order, where the paper is not damaged or decayed, until a new book shall be necessary to be provided, and the directions aforesaid shall be observed in every such new book. And all books provided as aforesaid shall be deemed to belong to every such parish or chapelry respectively, and shall be carefully kept and preserved for publick use.

25. After 25 *March* 1754. all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and immediately after the celebration an entry thereof shall be made in such register to be kept as aforesaid; in which entry it shall be expressed, That the

marriage

marriage was celebrated by banns or licence; and if both or
 either of the parties married by licence, be under age, with the
 consent of the parents or guardians as the case shall be, and shall
 be signed by the minister with his proper addition, and also by
 the parties married, and attested by such two witnesses; which
 entry shall be made in the form or to the effect following, that
 to say,

B. of [the
this] parish

C. D. of [the
this] parish

are married in this [church
chapel] by [banns
licence] with con-

sent of [parents
guardians] this

day of

the year

by me J. S. [Rector
Vicar
Curate]

this marriage was solemnized between us [A. B.
C. D.] in the

presence of [E. F.
G. H.]

the act whereby, with intent to elude the force of the said
 act, making false entries in the register, forging such entries or
 licence of marriage, or knowingly publishing such forged
 entries or licence, or destroying such register book or any part
 thereof, is felony without benefit of clergy.

26. If any person shall after 25 March 1754. solemnize ma-
 trimony in any other place than a church or publick chapel
 where banns have been usually published, unless by special li-
 cence from the archbishop of *Canterbury*, or shall solemnize ma-
 trimony without publication of banns, unless licence of marriage
 first had and obtained from some person or persons having
 authority to grant the same; every person knowing and wilfully
 offending, and being lawfully convicted thereof, shall be ad-
 judged to be guilty of felony, and shall be transported to some
 of his majesty's plantations in *America* for the space of fourteen
 years. But the prosecution to be within three years.

Persons solemnizing marriage without banns or licence, or in any place but a church or publick chapel without special licence,

to be transported for 14 years.

27. There shall be no suit for the future to compel a celebra-
 tion of marriage by reason of any contract of matrimony, whe-
 ther *per verba de presenti*, or *de futuro*.

Contracts of matrimony avoided.

28. The said act shall not extend to the marriages of any of
 the royal family, nor to *Scotland*, nor to marriages between
 Quakers or Jews, where both parties are Quakers or Jews, nor to
 marriages beyond sea.

Quakers and Jews excepted.

C H A P. XIV.

Of the Clerk of a Parish.

What parish
clerks were
originally.

1. **P**ARISH clerks were originally real clerks, of whom every minister had at least one to assist under him in the celebration of divine offices, and therefore were usually chosen by him. They were therefore afterwards called clerks, though not in holy orders. The business at first was to officiate at the altar, and say masses for the dead, and they had a competent maintenance for this service by the offerings made at those altars where they officiated; for in the times of popery there were several altars in one church.

How chosen.

2. Since the reformation there is but one clerk in a parish, who by the 91st canon is to be chosen by the minister, who is to signify his choice to the parishioners, the next *Sunday* following, in the time of divine service. But where there is a custom for the parishioners, to choose their clerk, 'tis good, and the canon cannot abrogate such custom; and in such case he may have a *mandamus* to the archdeacon to swear him. *Comber, 105, 144.* And if a suit should be in the spiritual court to remove him, and to put in another chosen by the parson, a prohibition shall go. *Cro. Car. 589. 2 Roll. Rep. 73, 481, 670. Cr. 670. 2 Roll. Abr. 424, 286.* And if a parson of a parish put a clerk so chosen out of his place, without cause, or interrupt him, an action lies as for any other man who is interrupted in any lay office. *March Rep 701, 174.* 'Tis said that they only who put him in can displace him, *1 Keb. 286.* but the ordinary may censure and excommunicate him for misdemeanors. After he is chosen and declared by the minister, he is usually licensed by the ordinary, and may sue for his dues in the ecclesiastical court.

Custom for pa-
rishioners to
choose him, is
good.

They who put
him in can put
him out.

His qualifica-
tions.

3. The person thus chosen must be twenty years of age, and who can write and read, and he should have a competent skill in singing. Though such clerks may receive the usual wages, and have remedy for the same in the spiritual court, yet if they sue for a certain quantity of bread due to them by custom from every parishioner at *Christmas*, a prohibition will be granted. *2 Roll. Abr. 286.* A *mandamus* may be granted to restore him to his place if he be removed. *2 Lev. 18.*

His duty.

4. His duty is to assist the minister, and make responses in reading prayers, baptizing, marrying, burying, and the other divine offices, setting the psalms, &c. though his office be but a lay office.

5. He

5. He is not a person corporate, nor hath succession, and the He is not a person corporate.
 parson is not tied to find the parish clerk, as it was adjudged in *He is not a person corporate.*

Paul and Wood's case, Hill. 30 Eliz. B. R. 1 Leon. 94. But if the parson be by custom tied to find such a clerk, a prescription to pay 5 s. per ann. or such sum to such a parish clerk by a parson in discharge of his tithes, is a good discharge of the tithes against the parson; but yet tithes are not payable to him as tithes, for that he is but a lay person. Year book 3 Ed. an-
quity 40. But to pay a rate to the parish clerk, is no good discharge of tithes against the parson or vicar, unless the parson be bound by custom to find a parish clerk. [Nor is a *modus* to a parson a good discharge against the vicar. *Yelv. 86. Contra Bulst. 220. 1 Leon. 94. Cro. Eliz. 71. 1 Bulst. 220. Intel v. Child, Mich. 14 Jac. 1. B. R.*]

6. Though, as has been said, a parish clerk be not of himself person corporate, nor hath succession, yet by a charter dated long ago as 17 Hen. 3. the parish clerks in and about the city of London were incorporated, and pursuant thereto have several by-laws and ordinances among them. And pursuant here-
 to, in the acts for building and settling the fifty new churches, Clause in the acts for building
 there is a clause to provide, that the parish clerk of the new fifty new
 parish shall be a member of the corporation or company of ma- churches.
 jor, wardens, assistants and brethren of the parish clerks of the parish churches of the city and suburbs of London, and the liberties thereof, the city of Westminster, and borough of Southwark, and the fifteen out parishes in the letters patent of the said corporation named, who make weekly and yearly accounts, commonly called the bills of mortality, of the christenings and burials happening in their several parishes, and for their being subject to the rules and orders of the said company; as any other parish clerk is or ought to be.

7. Bishop Kennet tells us, that the parish clerk formerly was to take an oath of fidelity to the parish priest, and was sometimes maintained by the appropriators as a menial servant to the parson, and that they were formerly to be men of letters, and to teach a school in the parish, and were sometimes elected by the parishioners, upon whose alms and oblations they were supposed to live. And that by the constitutions of Alexander bishop of Eborac 1237, and by the synod of Cologne 1280, parish clerks were to be schoolmasters in country villages, and adds, that it
 Advice about parish clerks.
 would be good service to this church and nation, to restore the ancient practice, especially in remote country villages; to which may add the charity schools, where the clerk would do much for the service of God, and the benefit of the people, if he were employed to instruct the children in reading and writing, and in learning the church catechism, that they might be bred to a life of christianity and good manners.

C H A P. XV.

Of the Organist.

1. **A**MONG those employed in and about the church, we may justly reckon the organist, who hath the care and management of the organ.

Of church music.

2. I shall not here enter into the disquisition, how far it may not only be lawful, but even expedient to make use of both vocal and instrumental music in churches. It is certain it was very much used under the *Jewish* dispensation; and *David*, who is recorded to be a man after God's own heart, took great delight in it, and was very skilful in it, and the songs or psalms which were composed either by himself or his masters of music by his appointment, to the praise and glory of the almighty, are used even to this day among us. The book of the psalms is owned by all to be canonical scripture, and as such to be inspired by the Holy Ghost; and though some of them especially are some of the sublimest and most elevated pieces of poetry, that perhaps were ever wrote, yet some of our modern saints cannot be brought to sing them, much less to use instrumental music in their assemblies: And this is the more to be wondered at, because in scripture 'tis expressly said, praise him with the organ &c. and in all the reformed churches abroad, and even in *England*, where money is loved as much as any where, and expense as much avoided, there are few churches without an organ, which is also used and practised in the church of *England*, and stipend or salary paid to the organist.

The psalms.

How organist chosen.

3. This is an officer chose by the parish, and paid out of parish money by the churchwardens, and allowed in their accounts; and if they do not duly pay him his salary when they are liable to be sued for the same.

4. And if the organist be unduly removed, *quære* if a man *mus* will not lie to restore him; and as he is a master of music so does he often teach some of the younger parishioners music.

5. If the organs be taken out of the church, the churchwardens may bring an action of trespass, though the vicar take them, because they belong to the parishioners, and not to the parson.

C H A P. XVI.

Of the Sexton.

1. **T**HIS is an inferior officer attending on the church, chose likewise by the parish. His business is to keep the church clean swept and adorned, to open the pews, to make and fill up the graves for the dead, and by the churchwardens direction, to provide candles and necessaries belonging to the church, to get the linen washed, &c. to attend during divine service, to keep out excommunicated persons, dogs, &c. and to prevent any disturbance in the church. Sexton how chosen, and his duty.

2. His fees are generally settled by order of the vestry, and a table of them is hung up there or in the church. His salary is paid by the churchwardens. And if he be unduly removed, a A mandamus will lie to restore him. mandamus will lie to restore him. 2 Leon. 18.

3. A person was indicted of felony, for digging up the graves of persons buried, and taking away their shrowds, coffins, &c. afterwards interring their bodies again; and it was resolved in this case, that the property of the shrowds, coffins, &c. remained in the person who was the owner when used, and the offender was found guilty of felony, but had his clergy. One indicted for felony. Hains's case, sexton of the parish of White-Chapel. 12. Co. 112.

3 Inst. 110. Co. Litt. 113.

4. Thus having treated of those officers, whose attendance is more immediately required in and about the church, we shall proceed to those who are chosen by the parish in vestry assembled; but first we shall mention a few things concerning vestries themselves.

C H A P. XVII.

Of Vestries.

1. **A** Vestry properly speaking, is the assembly of the whole parish met together in some convenient place, for the dispatch of the affairs and business of the parish; and this meeting being commonly held in the vestry adjoining to, or belonging to the church, it thence takes its name of vestry, as the place itself does from the priest's vestments, which are usually deposited and kept there. What a vestry is.

2. The Sunday before a vestry is to meet, publick notice ought to be given, either in the church, after divine service is ended, or else at the church door as the parishioners come out, both of the calling of the said meeting, and also of the time and place of the assembling of it; and it will be fairest then also to declare for what business the said meeting is to be held, that no one may be surprized, but that all may have full time before to consider of what is to be proposed at the said meeting; and 'tis usual that for half an hour before it begins, one of the church bells be tolled to give the parishioners notice of their assembling together, and when they are met, the major part present conclude those who are absent: And to make this consent more authentick, it will be convenient that every such parish act be entered in the parish book of accounts, and that every man's hand consenting to it be set thereto; for then it will be fixed and an apparent rule for the churchwardens to act by, and also by which the parishioners may judge when they take their accounts, whether what they have done be according to their commission or no. *St. Saviour's parish's case*, 5 *Mod.* 66, 67. *Lane* 21. *Hetley* 61. *Littleton* 263. *Popham* 137. 1 *Mod. Rep.* 194, 236. 2 *Mod.* 222. 2 *Vent.* 167.

If any one shut one out of the vestry who has a right to come in, an action on the case lies for it.

3. *Parish*. 11 *Geo* 1. There was a special action on the case, brought by a parishioner against the defendant, for shutting him out of the vestry, he having offered to come in and vote among the parishioners. In which action the plaintiff declared that there was a general summons for the parishioners, &c. to meet at a vestry in such a room near the church; and that every parishioner who paid scot and lot, had a right to be present, and vote at the vestry; that the plaintiff was a parishioner, and paid scot and lot, and was coming to the said vestry, but was shut out by the defendant, so that he could not be present and give his vote at the meeting of the parishioners, consulting for the good of the parish, *ad damnum*, &c. The defendant demurred specially to this declaration, for that the plaintiff did not shew any special damage by his being shut out, and the plaintiff joined in demurrer. Upon arguing of which it was held by the court, that the plaintiff could not maintain his action, because he had not set forth any right which he had to come into the room; but if he had set forth such right, the action would have lain, because if he had a right, he must have a remedy to assert it; and he hath no remedy but this action: For there is no breach of the peace, or injury to the publick, therefore no indictment or information can be good in this case. By the common law, a parishioner may have a right to be at the vestry, and probably if he be disturbed in the quiet enjoyment of that right, he may maintain an action against the disturber; but then he must set forth a right to enter the room where the vestry was kept: For otherwise it may be the room of the defendant, where he hath

right to come. Therefore it was agreed, that if the right to enter this room had been well set forth, the action would have been well brought, for every parishioner has a private right to be present at the vestry and vote; and therefore any one of them may have an action against another for hindering him to be present. But because the plaintiff had not set forth a right in himself, to enter into the room, therefore upon that point judgment was given against him by the court *una voce*, and not upon the merits of the case. *Intr. Pasch. 1 Geo. 1. 1 Rot. 243. Syllibrown v. Ryland, 1 M. Cases 351.*

4. Antiently and at common law, every parishioner who paid the church rates, or scot and lot, and no other person had a right to come to these meetings, and when they who are thus qualified, are thus assembled at the time and place appointed, the present conclude all the absent, and the major part of the present conclude all the rest. And in the country this custom still prevails in most places. But in larger and more populous parishes, especially in and about *London* and *Westminster*, whether from the attention of most people to their private affairs, or from the tumultuous proceedings which generally happen in such populous assemblies, a custom has obtained of yearly choosing a select number of the chiefest and most reputable men to represent all the rest, and to manage the concerns of the parish for that year, which by degrees is become a fixed method; and in these parishes the parishioners have lost not only their right to incur in the publick management as often as they should attend, but also (in most places, if not all) the right of electing managers, who are called a select vestry. In the election of these select vestrymen, those who do not pay to the church rates have no votes, except the parson or vicar. But in some parishes these select vestries having been thought oppressive and injurious, great struggles have been made to set aside, and demolish them.

5. *Mich. 2 W. & M. B. R.* in a prohibition prayed to the spiritual court at *York*, the suggestion set forth, that the parish of *Masbam* in *Yorkshire* was an antient parish, and that time out of mind there were twenty-four of the chief parishioners, who always had been called the four and twenty; and that during the immemorial, as often as any one of the said four and twenty parishioners happened to die, the rest surviving of the four and twenty did choose, and during all the said time used to choose, one other fit and able parishioner of the same parish, to sit in the room of the twenty-four, in the room of him so deceased; and that within the said parish there is, and during time immemorial, there always has been a custom, that the said twenty-four for the time being, have been used and accustomed, as often as there was occasion, to make rates, and to assess reasonable sums of money, upon the parishioners and inhabitants in the said parish for the time being, for the repairs of the church, &c.

Who have a right to vote in vestry, and who not.

Of select vestries.

Cases of select vestry.

And

And that the churchwardens of the said parish, during all time aforesaid, have used to receive all duties and dues burials in the body or isles of the said church; and if any of inhabitants refuse to pay the said rates or dues for burials, then the churchwardens by warrant from the twenty-four the time being, were used to distrain the goods and chattels of the said parishioners in the said parish; and that the said twenty-four, with the consent of the vicar or curate, &c. have used to repair the body and isles of the said church; and that the churchwardens for the time being, during all the time aforesaid, have always used to give up their accounts to the said twenty-four who allowed or disallowed the said account, as they saw expedient; and that on the allowance of such account, the churchwardens have always been discharged from giving any other account in any other place, &c. that the plaintiffs were churchwardens, &c. for the year one thousand six hundred and eighty and after their year was ended, they gave in their accounts to the twenty-four. And that though all pleas concerning prescriptions and customs, ought to be determined by the common law, yet the defendant hath drawn and cited them into the spiritual court, &c. to give in, and pass their said accounts there; although the said plaintiffs have pleaded all the matters aforesaid in the said spiritual court, yet the said defendant hath refused to admit, or to receive their said plea, &c. Upon great debate in this case at several times, the court was of opinion, that the custom aforesaid was good and reasonable, and a prohibition was absolutely granted. *Batt and others, the late churchwardens of the parish of Massam, v. Watkinson, 2 Lutw. 1027.*

Constant immemorial usage the only support of select vestries, &c. See the following sections.

6. So that prescription and constant immemorial usage be to be the basis and only support of these vestries; and pursue hereunto, upon the same foundation, and for the same reason was the select vestry of the parish of *St. Mary At-Hill* in *London*, confirmed and established in *B. R.* but a few years ago. And since then, the select vestries of *St. Saviour's* and *St. Clement's* in *Southwark*, for want of proof of such prescription, and immemorial usage, have been both set aside.

Clause in the act for building fifty new churches.

7. There are in several parishes several differing customs, as to the electing, government and management of these vestries, which was the reason that in the Stat. made 10 c. 11. for the building the fifty new churches in or near *London* or *Westminster*, there is a clause whereby five or more commissioners, with the consent of the ordinary, are empowered by a writing under their hands and seals, to be inrolled in every parish to name a sufficient number of the inhabitants of each parish to be vestrymen thereof, and upon the death or removal of any vestrymen, the rest, or the majority may choose another, being an inhabitant and householder in the parish.

8. And by the statute 2 G. 2. c. 10. made for the raising a Of whom the maintenance for the rector of the new church erected in the vestry is to be hamlet of *Spittlefields*, it is enacted, That the rector of that new church, and the churchwardens and overseers of the poor of that new parish for the time being, and all other persons who have served or paid fines for being excused from serving the office of churchwarden or overseer of the poor for the hamlet of *Spittlefields*; or who hereafter shall serve, or by the vestry be admitted to pay fines for being excused from serving the office of churchwarden, or overseers for the poor of the new parish, so long as they shall continue householders within the said parish, and paying to the poor's rate, shall be the vestrymen for the time being of the said new parish; and shall meet from time to time on public notice, to be openly read and published in the church, by order of the rector, churchwardens or overseers of the poor, or either of them, on the Lord's day next preceding, immediately after divine service: and the said vestrymen, or the major part of such them as shall be assembled at such meetings, shall elect and nominate a lecturer, or lecturers, as also churchwardens, fidesmen, parish clerk, and all other officers for the parish, who were usually elected by and for the said hamlet, and also elect, remove, and put out the sexton, gravediggers, and all other officers and servants to be employed about opening the pews, making the graves, or otherwise in or about the said church; and shall have, and may exercise all other the same powers and authorities as they might or could have done, if they had been named to be vestrymen of the said new parish by the commissioners, with the consent of the ordinary, by instrument under their hands and seals inrolled in the court of chancery, according to the said act, 10 Ann. c. 11. which lecturers also to be chosen, shall be admitted by the rector to have the use of the pulpit.

9. And by the statute made 2 G. 2. c. 30. for raising a main- Of whom in the tenance for the rector of the new church erected in the hamlet parish of Wapping *Wapping Stepney*, it is enacted, That the rector, churchwardens, and overseers of the poor for the time being, and all other persons who shall pay two shillings a month or more, towards the relief of the poor, and no others, shall be vestrymen of that new parish, and shall meet, &c. and have the same powers, &c. as in the last preceding clause.

10. And by the statute made 3 Geo. 2. c. 17. for raising a Of whom in maintenance for the rector of the new church in the hamlet of Limehouse parish. *Limehouse*, it is enacted, That the rector, churchwardens, and overseers of the poor, and all other persons who shall pay twelve pence each book towards the relief of the poor of that new parish, and none others, shall be vestrymen of the said parish, and shall meet, &c. and have the same powers, &c. as in the preceding clause for the new church in *Spittlefields*. And in the the same act there is another clause, which says that the inhabitants

And in the ham-
let of Ratcliffe.

bitants of that part of the hamlet of *Ratcliffe*, which is thereby intended to be part of that parish, who shall pay two shilling and six pence a month towards the poor's rates of *Ratcliffe*, shall be part of the vestrymen of that new parish, and may act as such in all matters relating to the church and parish, as the other vestrymen of that new parish may do; but they shall not intermeddle in any affairs that concern the hamlet of *Limehouse* in those respects wherein that hamlet, and the said part of the hamlet of *Ratcliffe*, are to continue distinct from each other.

Of whom it is
composed in the
parish of St.
Nicholas, Dept-
ford.

11. By a statute made 3 *Geo. 2. c. 33.* for the maintenance of the minister of the new parish church of St. *Nicholas, Deptford*, it is enacted, That the minister, churchwardens, overseers of the poor, and all other parishioners, who shall pay to the relief of the poor, and none others, shall be vestrymen of that new parish, and shall meet, &c. and have the same power, &c. as in the preceding clause in the statute 2 *G. 2. c. 10.* relating to the new church in *Spittlefields*.

And Horsley-
down.

12. And by the statute of 6 *G. 2. c. 11.* for providing a maintenance for the new church of *Horsleydown*, &c. it is enacted, That the rector of that new church, and all other parishioners renting, &c. houses, &c. of ten pounds yearly value, as assessed to the land-tax within the parish, shall be vestrymen, and no others; and shall meet and choose churchwardens, &c. as above in the clause for the new church in *Spittlefields*. And by this act they are empowered to raise a sum not exceeding 500 *l.* to be appropriated for buying necessities for decent order for administering the sacrament, and other uses of the church and steeple. *Vide the act.*

And new church
near Old-street.

13. And by the stat. 6 *Geo. 2. c. 21.* for providing a maintenance for the rector of the new church near *Old-street*, in the parish of St. *Giles, Cripplegate*, &c. it is enacted, That the rector, churchwardens, and overseers of the poor of this new parish, and other persons who have served all offices for the said new parish, or paid fines for being excused, or who shall hereafter serve, or by the vestry be admitted to pay fines for being excused, shall be vestrymen of the said new parish, so long as they respectively continue householders within the same, and paying to the poor's rate, and shall meet, &c. and have the same powers as above in the clause for the new church in *Spittlefields*. And may make rates for buying necessities for the sacrament, and other uses of the church and steeple. *Vide the act.*

Vestries, &c.
must provide one
or more engines
against fire, &c.

14. By stat. 6 *Ann. c. 31.* every parish within the bills of mortality, shall at all times have and keep in repair in some publick place in each parish, a large engine, and hand engine, for extinguishing fires, and one leathern pipe and socket of the same size as the plug or fire-cock, to the intent the socket may be put into the pipe to convey the water clean into the engine.

15. And

15. And by the statute 7 Ann. c. 17. the churchwardens and overseers of the poor and inhabitants, &c. in a vestry assembled, shall and may rate and assess such competent sums of money as shall be necessary to defray the charges of providing and maintaining the engines, stop blocks and fire-cocks, and other implements and materials; which rates being confirmed as the poor's rates are, may be levied in the same manner. And if the vestries within the weekly bills of mortality shall think it necessary to have more than one great engine, or hand-engine, they may provide them at the parish charge, by an assessment to be made, and under the same regulations as in the preceding clause are mentioned. And vestries of parishes are to be consulted by churchwardens and overseers of the poor, and give their consent to the hiring of houses, for the better employing and maintaining the poor, by stat. 3 G. 1. c. 7.

And may assess rates for the same.

Vestries must be consulted by parish officers in providing work-houses for the poor.

C H A P. XVIII.

Of the Vestry Clerk.

THE clerk of the vestry is chosen by the vestry, and he acts as register or secretary thereto and therein, but has no vote as clerk; and his business is to attend at all parish meetings, and to draw up and copy all orders and other acts of the vestry, and give out copies thereof when necessary; and he has the custody of all books and papers relating thereto.

The office and duty of clerk of the vestry, &c.

C H A P. XIX.

Of the Beadle of a Parish.

BEADLE (*Sax. býdel*) from *biddan, orare*, in the general sense of the word signifies a cryer or messenger of the word bydel or beadle.

A beadle of a parish is one who is chosen by the vestry; his business is to attend it, and to give notice to the parishioners when and where it is to meet, to execute its orders, to assist the constables in taking up beggars, passing vagrants, &c. and to send, where they are to be passed to a great distance, he is sometimes inserted among the overseers of the poor, &c. and generally

His office and duty, &c.

generally to do and execute all the orders and business of the vestry and of the parish, as their messenger or servant, &c.

We shall proceed next to treat of churchwardens, to which may be added synodsmen or sidesmen.

CHAP. XX.

Of Churchwardens, and Synodsmen or Sidesmen.

1. **T**HE antient episcopal synods (which were held once a year, about *Easter*) were composed of the bishop as president, the dean of the cathedral as representative of that collegiate body, the archdeacons, as at first only deputies or proctors of that inferior order of deacons, and the urban or rural deans, who represented all the parochial priests within their division.

The origin of
sidesmen and
churchwardens.

2. The urban and rural deans were at first so called from informing and attesting the disorders of clergy and people in the episcopal synod. But when they sunk in their authority, the synodical witnesses were a sort of impanelled jury, a priest, and two or three laymen for every parish, who were upon oath to present all hereticks and other irregular persons. And by a provincial constitution at *Oxford*, under *Edmund* archbishop of *Canterbury*, anno 1236, it was ordered, that there should be in every urban and rural deanery two or three men, having GOD before their eyes, who at the command of the archbishop, or his official, should inform of the publick excesses of prelates and other clerks. But afterwards their number was contracted into two for every diocese, chosen annually, who were to have no jurisdiction, but to inquire into all matters that wanted correction and reformation, and faithfully report them to the next provincial council or episcopal synod, where inquiry was made according to certain articles drawn out of the canons, which were generally the same; according to which, the *juratores synodi* or *testes synodales* were to give their answers, upon a solemn oath which was therefore called *juramentum synodale*, as is now by churchwardens to make their presentments. So that when the urban and rural deans lost this synodical honour, that part of their duty which related to the information of scandal and offences, was conferred upon the churchwardens of every parish who became the grand inquest upon every visitation, and were upon oath to present all offenders or violators of the church.

Kennet's Parochial Antiquities, p. 649.

3. From hence sprung the office of churchwardens, or at least of synodsmen or sidesmen, as to that part of their office which

relate

tes to presentments; for to other purposes, *viz.* To take care of the goods, repairs and ornaments of the church, the churchwardens at the common law for many hundred years have been corporation; but it is probable they did not begin to make presentments till a little before the reformation; for I do not find this part of their office enforced by any express canon, till year 1571. Churchwardens then being (as has been said) a corporation, to take care of the goods of the church to which they have a right, for the benefit of the parishioners, I will treat of them under these following heads. 1. By whom churchwardens are to be chosen. 2. Of presentments made by them. 3. What actions they may bring, and for what. 4. When to whom they are to account. 5. Of actions brought against them. 6. Of their power in and about the church. 7. Of rates, &c. 8. Of sequestrations, &c. 9. Of their duty by several statutes.

1. They are annually chosen by the joint consent of the minister and the parishioners in *Easter* week, and sworn the first week after, or some following week, according to the direction of the ordinary; but if the minister and parishioners cannot agree in their choice, then by the 89th canon the minister shall choose one, and the parishioners the other. But this right in some places hath been lost by disuse, and it hath been said, that the common right, every parish ought to choose their own churchwardens; which right prevails still in *London*, and is not to be overthrown but by a contrary custom. Therefore such incumbents, as are intitled by custom as well as canon to nominate churchwardens, are concerned for themselves and their successors to see that right kept up. *Hardres* 379. 5 *Mod. Rep.* 324. For where an ancient custom of choosing is in any parish contrary to the canon, such custom is still to be observed, of which we have many precedents, prohibitions having been granted; as in *Warwick's* case, *Pasch.* 17 *Jac.* 1. *B. R.* *Cro. Jac.* 532. 12 *H.* 7. 28. *Evelin's* case, 15 *Car.* 1. *B. R.* &c. *Cro. Car.* 551.

2. Before the making this canon, the parishioners in some places chose both the churchwardens, and where that was used, the canon doth not abrogate the custom: And in such case, if the archdeacon, or other ecclesiastical officer, should refuse to swear them, a *mandamus* lies. So it was in the case of *The King Martin Rice*; the archdeacon returned, that he was a poor *hairy-man*, and a *servant*, and unable and unfit to execute the office, &c. This return was held insufficient; the archdeacon had nothing to do but admit. But though every parish might formerly have a right to choose their churchwardens, yet they were not to choose in the manner of their choosing; therefore a custom may be alleged, and issue may be taken at law to try whether a select vestry or the whole parish ought to choose. *Jones* 439. 10 *Car.* 551, 552, 589. 2 *Roll. Abr.* 234, 287. *Hardres* 379. 2 *Cro.* 532. *Noy* 31, 139. And to such a *mandamus* the

How churchwardens are chosen.

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the archdeacon ought not to return, *quod non sibi constat*, that there is such a custom, for his return should be positive, upon which an action might be grounded to try the custom, which was allow'd by the court to prevail against the canon. 1 Vent. 267. And if he should return a custom for the parson to choose one, and it should happen to be false, both the churchwardens may join in action on the case against him for such a false return, in which damages shall be recovered by both. 3 Ld. Raym. 362. In 2 Lut. f. 1012. there is a precedent for such an action of the case brought by a churchwarden against a chancellor of the diocese of *Chester*, upon refusing to swear him, and returning to a *mandamus* that he was not chosen churchwarden of the parish of *St. Peter* in *Chester*. In *Carpenter's* case, the *mandamus* was directed to the commissary to swear the churchwardens, who were chosen by the parishioners by virtue of a custom, which the rector denied, and insisted upon his right to choose one. The commissary made a special return, which is set forth at large in the report, but a prohibition was granted, for the ecclesiastical court cannot try the custom. Raym. 439. To a *mandamus* to swear a churchwarden, the archdeacon returned *non fuit electus*; in B. R. this return was held to be ill, and a peremptory *mandamus* was granted. But the reporter bids us note, it was certainly wrong; for the return is a good return, and has often been made to such *mandamus*, and actions brought upon the return, and tried, *The King v. White*, 2 Ld. Raym. 1379, 1380. and according to this opinion of Ld. Raym. it was ruled by him and Reynolds justice, in the case of *The King v. Harwood*, 2 Ld. Raym. 1405.

6. The parishioners are the proper judges of the ability of persons to serve as churchwardens, because they have a trust reposed in them by the parish as temporal officers. 5 Mod. Rep. 325. 1 Vent. 266. for if the churchwardens fail with money belonging to the parish in their hands, the parishioners are the losers.

The Oath of a Churchwarden.

Oath of a
churchwarden.
Cod. 243.

7. **Y**OU do swear truly and faithfully to execute the office of a churchwarden within your parish, and according to the best of your skill and knowledge, present such things and persons as to your knowledge are presentable by the laws ecclesiastical of this realm.

So help you God, and the contents of this book.

8. If any person elected to be churchwarden shall refuse to take the oath according to law, he may be excommunicated for such refusal.

9. The

9. The office of churchwardens is reputed to continue till the new churchwardens that succeed are sworn.

10. All peers, clergymen, parliament men, servants to the king in ordinary, lawyers and attornies, physicians, surgeons and apothecaries, by stat. 5 H. 8. c. 6. and 32 H. 8. c. 40. 6 W. c. 4. 1 Ann. teachers or preachers of dissenting congregations; And by stat. 10 & 11 W. c. 3. all persons who shall take and prosecute to conviction any felon guilty of privately and feloniously stealing any goods, &c. of the value of 5 l. or more, by night or day, out of any shop, warehouse, coach-house, or stable, though such shop, &c. be not broke open, or though the owner or any other person be or be not in such shop, &c. (Vide the act) are all exempted from being churchwardens. And by stat. 1 W. & M. c. 18. if a dissenter be chosen churchwarden, he may execute the office by a sufficient deputy by him to be provided, who shall comply with the laws in that behalf. And whoever is legally chosen must be an inhabitant of the parish. By the last militia act, 2 Geo. 3. no serjeant, or private man serving in the militia shall be appointed to serve as a parish officer.

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C H A P. XXI.

Of Presentments made by Churchwardens.

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G which

which are given in charge at the visitation, but not oftner than once a year, where it hath been no oftner used; nor above twice in any diocese whatsoever, unless it be at the bishop's visitation. But voluntary presentments of any notorious offenders may be made oftner.

Not to be made
out of malice.

2. Presentments which they make must not be with a malicious design to vex the people; for if so, then an action on the case lies against them; but if they have a verdict, they shall not have double costs, though the statutes of 7 *Jac.* 1. c. 5. and 21 *Jac.* 1. c. 12. expressly provide that they shall, where the action is brought against them for any thing done by virtue of their office; because their presentments are merely ecclesiastical, and the law-makers never intended to give double costs, but where officers were sued for temporal matters, done by them in execution of their office. *Cro. Car.* 285. *Jones* 530. Though this distinction seems to be very nice, for the churchwardens are not named in the statute of 7 *Jac.* 1. c. 5. which gives the double costs; but that statute being made perpetual by 21 *Jac.* 1. c. 12. the churchwardens are declared to be within the purview of the former statute. Now if officers shall recover double costs when sued for what they do only in temporal matters, then this distinction is almost in vain, because the office of a churchwarden, especially in making presentments, relates chiefly to such matters which concern a spiritual jurisdiction. The time of making these presentments is usually at *Easter*. As to the things to be presented by the churchwardens, they are all things presentable by the ecclesiastical laws which relate to the church, the parson, and the parishioners. 3 *Cro.* 291. 1 *Vent.* 114. The articles delivered to them at the visitation, are offered only by way of direction and charge: And by the tenor of their oath the ecclesiastical laws, and not the articles, are the legal rule and measure of their duty; for they are sworn to present such things only as to their knowledge are presentable by the ecclesiastical laws of this realm. They are expressly required by the canons to present all who offend their brethren, either by adultery, whoredom, incest or drunkenness, or by swearing, or any other uncleanness and wickedness of life. *Canon* 109. All schismatics, disturbers of divine service, and popish recusants. *Vide Can.* 110, 111, 114.

What they are
sworn to present.

What oath not
obliged to take.

3. An oath was tendered by the spiritual court to a churchwarden to present according to the articles of the bishop, which were many special things; as to present filthy talkers, &c. and a prohibition was granted; but if the oath had been to present according to the ecclesiastical laws, and the articles offered only by way of direction, in such case a prohibition ought not to go. 1 *Vent.* 114.

4. The presentments are by the 110th canon required to be made at home, yet every visitor hath a right of personal examination.

nation as often as he finds occasion for it, agreeable to the ancient practice. If churchwardens wilfully refuse to present notorious offenders, they are not to be admitted to the holy communion; and upon proof in cases of wilful omission, their ordinaries shall proceed against them in such sort as in cases of wilful perjury in the ecclesiastical court, by canon 117. And by the 121st canon, no one ought to be cited into several courts, for one and the same crime; and neither the archdeacon nor the bishop's chancellor, shall intermeddle with the crimes or person detected and presented in each other's visitation, upon pain of suspension, until he repay the costs and expences which the persons grieved have been at by the vexation.

No one ought to be cited in two courts for the same crime.

5. If the churchwardens refuse to present, the minister may present separately, but he shall not present sins revealed to him in confession, nor make those sins known to any person whatever (except such, the concealment whereof is capital) under pain of irregularity. *Can. 113.* But the presentment of the minister ought to be on oath. *2 Vent. 42.*

If churchwardens won't present, minister may.

6. Churchwardens are not to be cited by the ecclesiastical court to any greater distance from home than that they may return the same day. *12 Co. 112.*

7. Churchwardens are sworn, and the minister charged to present as well the crimes and disorders committed by criminous persons, as also the common fame which is spread abroad of them. *Can. 115.*

8. The articles commonly exhibited to churchwardens to make their presentments, may be reduced thus, viz. To things which concern, 1. The CHURCH. 2. The PARSON. 3. The PARISHIONERS. 1. Those things which concern the Church. Alms, whether a box be kept for that purpose; assessments, whether made for repairs; bells and bell-ropes, if in good repair; bibles, whether in folio; canons, whether a book thereof; church-yard, if well fenced; commandments, if put up; common prayer-book, if fair and in folio; communion-table, if decent, with a carpet; chest with three locks; church and chancel in repair; creed in fair letters; cups and covers for bread, &c. cushion for pulpit; desk for reader; flagon; font; gravestones, if well kept; king's arms, if set up; Lord's prayer, if set up in fair letters; marriage, whether a table of degrees; monuments, if safely kept and undefaced; register book in parchment; surplice, whether any; table cloth; tombs, if well kept.

Presentments concerning the church.

9. 2. Those things which concern the Parson. 39 Articles, Concerning the if duly read; baptizing with godfathers; canons, if read once a year; catechising children; common prayer, if duly read, &c. dead, if he bury them; doctrine, if he preach good; gown, if he preach in it; homilies, if read, or he preach; January 30, if observed; May 29, if observed; marrying privately, or with-

out

Concerning the
parishioners.

out banns or licence; *November 5*, if observed; preaching every *Sunday*; peace-maker, if he be; perambulation, if duly performed; sacrament, if duly celebrated; sedition, if vented; sick, if visited; sober life; surplice, if he wear it.

10. 3. Those things which concern the *Parishioners*. Adulterers, if any; alms-houses, if abused; ale-houses, &c. in divine service; answering according to rubrick; bowing at the name of Jesus; baptism, if neglected by parents; blasphemers, if any; church, resorting to it; dead, if brought to be buried; drunkards, if any; fornicators, if any; legacies, if any given to pious uses; marrying within prohibited degrees; marrying without banns, licence, or at unlawful hours; sacraments received three times in a year by all above sixteen, whereof *Easter* to be one; school, if abused; seats, if parishioners are placed in them without contention; standing up, and kneeling duly; *Sundays*, working therein; swearers, if any; women, if come to be churched.

Ought to present
those who teach
school without
a licence.

11. And lastly, which I fear is not duly minded, whether any dissenting from the church of *England*, do within their parish keep schools, either publicly or in any private family, unless he hath subscribed the articles, and made and subscribed the declaration above mentioned, and thereon taken a licence of the ordinary to teach, and constantly come to church; and therefore, if any one, without performing all this, takes upon him in any parish to teach and instruct youth in manner as aforesaid, he is to be presented for the same. And it being a matter of great moment to secure youth from being corrupted with ill principles in their education, it becomes churchwardens, and also church governors, with their utmost care to do their duty herein. For it is held, that dissenters, by the act of toleration, 1 *W. & M. c.* 18. are not exempted either from the penalties contained in the statute of 1 *Jac. 1. c.* 4. or from those contained in the statute of 14 *Car. 2. c.* 12. against teaching school without a licence from the bishop. Where a schoolmaster was sued in the ecclesiastical court for keeping a school without a licence from the bishop, contrary to the canon, upon a motion for the prohibition it was denied; for though the act of uniformity gives a penalty of five pounds in such case to be recovered by bill, &c. that doth not take away the ecclesiastical jurisdiction where they proceed on the canons, which are neither contrary to the law, nor incroach on the king's prerogative. 2 *Lev. 222.*

Spiritual court
has jurisdiction
over them.

C H A P. XXII.

What Actions Churchwardens may bring, and for what.

1. **C** Churchwardens may maintain an action for defacing a Monument. monument in the church. *Godbolt* 279. And so may an heir by descent have an action against any one who beats down or defaces coats of arms, &c. of his ancestor in the church or church-yard. *3 Cro.* 367.
2. In an action of account brought by churchwardens against their predecessors, they must declare, *quod reddant eis computum de bonis parochianorum*, and not *de bonis ecclesiæ*. *1 Vent.* 89. Goods:
3. It is generally held, that churchwardens have no power to do any thing to the disadvantage of the church, and therefore if they recover in an action, one of them cannot release the costs. So if they libel in the bishop's court against a parishioner for not paying a tax assessed on him towards the repair of the church, and there is a sentence against him, and upon an appeal to the metropolitan, one of the churchwardens releases, this doth not discharge the appeal; because the spiritual court having the original jurisdiction of taxes for repairs, shall likewise have jurisdiction of all matters that depend thereon, and that court shall determine whether this release shall bar both of the churchwardens; adjudged upon a demurer to a prohibition. Not to act to the disadvantage of the church.
4. They may maintain an action of trespass for any thing taken out of the church which belonged to the parishioners; and this the new churchwardens may do, though the trespass was done in the time of their predecessors. *Cro. Eliz.* 145, 179. *Leon.* 177. And a release by one is no bar to the action of the other, because they have no proper interest in the things themselves for which they sue, but are only a special corporation for the benefit of the church, for which reason they are always to conclude their declaration *ad damnum parochianorum*, and not to their proper damage. *1 Roll. Rep.* 426. *2 Roll. Abr.* 306. *2 Cro.* 234. For goods, how to sue.
5. But the suits which they bring in the spiritual court must not relate to any thing concerning the inheritance. *2 Roll. Abr.* 37. therefore, if they libel for a way to the church; or to repair the fences of the church-yard by reason of lands adjoining; that the defendant, and all those whose estate he hath in such a house, have used to find bread and beer for the parishioners in their perambulation: These are all temporal matters, and the allowance of such a refreshment is in nature of a corody, in which an assize will lie. *Mich.* 13 *Jac.* v. *B. R.* The church-

churchwardens of *Offington's case*, 2 *Roll. Abr.* 287. p. 49.
1 *Roll. Rep.* 259. *Moor* 916.

Not prescribe for
lands except in
London.

6. They cannot prescribe to have lands, because they are not a corporation for that purpose, *viz.* to have lands to them and their successors, but only for the goods of the church. *March* 66. But in *London*, by the custom 'tis otherwise, for there they may take and hold lands. *Cro. Jac.* 532. 12 *H.* 7. 27, 28. neither can they have any action of trespass at common law to recover goods of which they were never possessed; but by a bill in equity they may have a decree for such goods, and they may have an appeal of robbery if stolen.

7. If they are cited in the ecclesiastical court after they have given up their accounts, and be excommunicated, they may have an action on the case against the prosecutor. *T. Raym.* 418. 2 *Jones* 132. 2 *Skew.* 144. 1 *D. A.* 211. p. 18.

Case for false re-
turn of manda-
mus.

8. They may join in an action upon the case for a false return upon a *mandamus*; for such a writ may be brought to compel the spiritual court to swear a churchwarden who was lawfully chosen by the parishioners, according to custom, though not according to the canon. 3 *Lev.* 362. 1 *D. A.* 6. p. 8. 2. *Lat.* 1010.

If freehold in-
jured, the parson
must bring the
action.

9. If any thing belonging to the freehold is broken or cut down, or the walls, windows, doors, or trees in the church-yard &c. the parson or vicar, and not the churchwardens, shall have an action, because the freehold belongs to the parson.

C H A P. XXIII.

When and to whom they are to account.

To whom
churchwardens
are to account.

1. **T**HEY are accountable to the rector, vicar, new churchwardens and parishioners, for what goods and money, &c. they have received for the use of the church; and this must be done at the end of the year; and what remains in their hands, they are to deliver to the new churchwardens, or to the parishioners by a writing indented; and if they refuse to give up their accounts within a month after, upon notice the new ones are chosen, they may be compelled by the ecclesiastical courts at the instance of the new churchwardens, or any of the parish that have interest, and who may likewise make exceptions against it; or they may be presented at the next visitation, or the new churchwardens may have an action against them at law: But by a particular custom they may give up their accounts to twenty-four of the chief men, or to a select vestry.

of a parish; and this was the case of the churchwardens of the parish of *Massam* in *Yorkshire*, *Batts & al. v. Watkinson*, *Lutwyche's Rep. Vol. 2. 1027. ante chap. 17. sec. 5.*

2. At the meeting for this purpose, the churchwardens having first produced the rates which they have made, must give an account how they have expended the sums levied by them; and when this account is allowed by the parishioners then present, it is to be entered in the church-book of accounts, which every parish is to have for this purpose, and those who allow the accounts are there to set their hands to it; and if there be any money remaining over, they are to deliver it with the said book of accounts to the succeeding churchwardens, to be put by them to the account of the next year.

How to account.

3. The exceptions against a churchwarden's account may be first as to the particulars on which the disbursements are made, and secondly, as to the justness and truth of the disbursements themselves. For if a churchwarden hath of his own head laid out the parish money, where he hath no authority by his office so to do, that is on new erections, or other such particulars, where the consent of the parish, or licence of the ordinary, or both, ought first to be had, the parish may refuse to allow it him in his accounts; and he may be further punished by the ordinary for the contempt put upon his authority herein, if it be in a particular where his licence was requisite for the doing of it. And although his disbursements be within the limits and power of his office, yet if not fairly stated, there lies a just exception against the account; and if it appears that he hath not dealt justly and fairly with the parish herein, but hath either charged to them more than he hath fairly laid out, or falsely and fraudulently expended more than he need, for by-ends of his own; all those particulars shall not only be defalked from his account where the fraud appears, but he may also be further punished by the ordinary, as one that has notoriously broken his trust, and violated the oath of his office by his knavery and falsehood; and whenever any churchwarden hath his accounts condemned for any such fraud, he must be condemned too in the charges of the suit.

Exceptions to their accounts.

4. And for avoiding all suspicion of guilt, it would be well if churchwardens would not accept of any entertainment from the workmen they employ, or the persons of whom they buy the materials; and not to make use of any materials of their own, unless they call some principal inhabitants of the parish, and fairly agree with them the price, before they convert them to the use intended; or use any other practice wherein they may have a by-end and self-interest of their own; for in affairs of this nature, a man ought to act with the same care and good husbandry that he doth in his own, or rather with much more.

Advice as to their laying out the publick money.

Account how
and when suf-
ficiently allowed.

Fraud keeps the
account open.

Difference as to
the goods of the
church.

Where disputes
about church-
wardens ac-
counts are to be
decided.

How to be re-
imbursed.

5. But when the old churchwardens have thus fairly accounted before the minister, the succeeding churchwardens and the major part of the parish, and their account is allowed by them; if they shall be called before the ordinary for this purpose, on their alledging and making proof that they have already accounted before the minister, the new churchwardens and the major part of the parish, and that their account hath by them been allowed; this is a peremptory bar against all further process, and they must be dismissed with their charges, that is, when they are cited only in general to account. But if any fraud be charged on them, and they are cited for that, no allowance of account can discharge them from any fraud which they may have been guilty of in their office. But whenever such is detected, they are accountable for it, and every parishioner hath a right to claim justice against them herein, and also the ordinary hath power to correct them for it.

6. But this must be understood only of the parish money or church rates, for as to the church goods, they being in an especial manner under the care of the ordinary, although all the parish have allowed the account, yet if the ordinary be dissatisfied, he may call them *ex officio* to account before him too, and also punish them if he finds they have disposed of any of them on what account soever, although they have the consent of every inhabitant of the parish for it, unless they have his consent too; for otherwise the parishioners may all combine to sell all the church goods and utensils; and so leave the church without that which is necessary for the performing of the divine offices; which the ordinary is bound to prevent, for he hath as to these a right of trust as well as of jurisdiction, and therefore none of them are to be disposed of, or otherwise converted to any other use whatsoever, without his consent had thereto.

7. If all the parish have allowed the churchwardens accounts of the church goods, the ordinary may nevertheless call them to account before him too, and punish them if he finds cause; but in laying out their money, they are punishable for fraud only, not indiscretion. 2 Roll. Abr. 122. Canon 89, 109. And disputes arising about the accounts of churchwardens, are to be decided before the bishop or ordinary; and for disbursements of any sum, not exceeding forty shillings, their own oath alone shall be admitted a sufficient proof; but for all sums above, receipts must be produced, and all necessary disbursements are to be allowed.

8. If their receipts fall short of the disbursements, the succeeding churchwardens ought to pay them the balance, and place it to their account, by Canon 88. And if they have not gathered their rates, they may present the persons making default in their last presentment, or pass over their arrears to their successors, who shall recover the same for them. Canon 88, 89, 109, &c. 1 Roll. Abr. 121.

9. Upon

9. Upon a motion for a *mandamus* to the old churchwardens Law case about the parish of C. to deliver the parish books to the new church- parish books. wardens, &c. it was insisted on by the other side, that the old churchwardens had a right to keep the parish books; so the *mandamus* was denied: For a contest between parish officers, which of them hath a right to keep those books, ought to be tried at law upon a feigned issue. *The King v. Street and Stroud*, 9 Geo. 1. 1 M. Cases 98.

10. After he hath fully accounted, if he be cited in the eccle- Case lies for tical court, and excommunicated, an action on the case lies vexation. against him at whose prosecution he was cited.

11. At the same time that the churchwardens pass their ac- At the passing counts of all money received and expended during their office, the accounts the church goods must also give an account of the church goods committed should be pro- their charge and custody, which must be then brought forth, duced. delivered over, and examined before the parishioners; and after that, they are to be delivered over to their successors by bill indented; as must also the keys of the parish chest, wherein are not what publick evidences belong to the parish; to which are usually three keys, of which the minister is to keep one, and the churchwardens the other two. And among other particulars of the church goods which the churchwardens have the custody of, and are to deliver over to their successors at the end of every year, are the terriers of the glebe lands, and the parish register book; both which are carefully to be kept and preserved every parish.

CHAP. XXIV.

Of Actions brought against them.

Churchwardens may be sued in the spiritual court for taking away any goods of the church, as bells, &c. and Of actions brought against churchwardens. such case the court will decree the things to be returned in specie; but if the suit is at common law, then damages are to be recovered. 1 Sid. 281, 282. 2 Keb. 6, 22. 1 D. A. 787. p. 1. Anno 18 Car. 2. an indictment was brought against the churchwardens of St. Martin's in the Fields, for taking a silver Extortion in them, *colore officii, corrupte & extorsive*, and this was for placing a man to be a gallery-keeper in the church. It was objected, that this was not an office, but an employment belonging to the churchwardens themselves, and they might depute any body to do it. But the words *corrupte & extorsive* being in the indictment, the court would not quash it till that fact was tried; and

Refusing to
receive poor.

and if it appeared that they had accounted to the parish for
cup, then it might be quashed. 1 *Sid.* 307. 2 *Keb.* 100.

3. Churchwardens and overseers of the poor refusing to
ceive any person removed by two justices, and to provide
them, forfeit five pounds, on proof of two witnesses before
justice; on refusal, distress, &c. for want, forty days impris-
ment, by stat. 3 & 4 *W. & M. c.* 11.

4. If an action be brought against any churchwarden, or
sons called sworn men, executing the office of churchwarden
for any thing done by virtue of their office; they may plead
general issue, and give the special matter in evidence: And
verdict be given for them, or the plaintiff shall be nonsuit,
discontinue, they shall have double costs. 7 *J. c.* 5. 2
c. 12. But this statute has been deemed to extend only to
tions relating to what they do in their temporal, and not
their ecclesiastical capacity; for in *Mich.* term, 2 *Car.* 16.
an action was brought against churchwardens, because they
presented the plaintiff, *falso & malitiose*, upon a pretended
of incontinency; upon *not guilty* pleaded, it was found for
defendants; and moved that they might have double costs,
cause they were vexed for what concerned their office: It
resolved, that it was not within the statute, for it is merely
ecclesiastical; and the makers of the statute never intended to
double costs, but where men are vexed, concerning tempo-
rals which they shall do by virtue of their office, and not
presentments concerning matters of fame. *Kerchevall v. S.*
and . . . *Cro. Car.* 185.

5. In all actions brought in any court at *Westminster*, or
the assizes, against churchwardens, overseers, and other persons
intrusted to receive collections for the poor, and other per-
monies relating to churches whereunto they belong, for the
covery of monies mispent by such officers, to the prejudice
such parishes, and of the poor; the evidence of the parishioners
other than such as receive alms, shall be taken and allowed.
3 *W. c.* 11. §. 12.

See more under title *Overseers of the Poor*, all churchwardens
being overseers of the poor.

CHAP. XXV.

Of their Power and Authority in and about Church, &c.

Of their power
and authority
in and about the
church;

1. **I**F a man erect a pew in a church, or hang up a bell
the steeple, they hereby become church goods (tho'
they are not expressly given to the church) and he may not
take

wards remove them; if he does, the churchwardens may sue

Stat. 10 Hen. 4.

If any one stands or sits covered in the church, the churchwardens may justify the taking a man's hat from his head ^{and divine service.} at the time of divine service; for though they may present this reverent behaviour in the spiritual court, yet they are to take that all things be decently done in the church at that time.

196. 1 Vent. 367. Jones Rep. 89. 1 Mod. 236.

v. 146.

They may order a cracked bell to be new cast, or they ^{Bells, &c.} dispose of the stones belonging to the church; but this must by the agreement of the parishioners. 1 Roll. Abr. 121. So they may dispose of any of the church goods in their possession, not without the consent of a vestry and ordinary. Roll.

426. 3 Bulst. 264. Yelv. 173. 2 Brownl. 215. 1 Roll.

393.

Where any contention is about a seat in the body of the ^{Of seats in} church, upon complaint made to the ordinary, he may decide ^{churches.} the controversy, by placing that person in it whom he thinks

and this power is conferred upon him by law, because he hath the general cure of souls within his diocese, is presumed to have a due regard to the qualities of the contending parties, and to give precedence to him who ought to have it. And though the seats are built and repaired at the charge of the parish, and the churchwardens should prescribe, that by reason thereof they have used to dispose of them to such persons as they thought fit; yet since, of common right, the ordinary hath the disposal thereof, and by the same right the parishioners ought to repair them; therefore such prescription shall not be allowed against his jurisdiction. 2 Lev. 211. Raym.

6. And upon the same reason, should now any gentleman buying a house in the parish, by the consent of minister, patron, and ordinary, build a new isle, and have a faculty from the bishop to hold the same, to the use of him and his family, to bury their dead in the said isle, and also to sit there, for the hearing of divine service, on condition constantly to repair it; this faculty would give him a good title to the said isle. But no such title can be good, either upon prescription, or any new grant of a faculty as aforesaid, to a man and his heirs; but the said isle must always be supposed to be held in respect of the house, and will always go with the house, to him that inhabits it. Brabin's and Tradum's case, Pojham 140. 2 Roll. Abr. 288, 289. Hob. 69. 12 Co. 106. 3 Inst. 202. 2 Bulst. 150. Noy 129. Roll. Abr. 289. 1 Sid. 88, 201. Raym. 52. 1 Keb. 345. Keb. 92. Resiants only are capable of acquiring a right in pews; therefore if one purchase a pew, and after leaves the parish, his interest in the pew is gone: But if he ceases to be a house-

Not to exclude
the power of
the bishop.

house keeper, and continues in the parish as a lodger, and to church, his interest continues. *Cases W. 3. 554.*

5. *N. B.* That how much soever it may have been the use in any place for the churchwardens to dispose of the seats in church, it can never amount to a prescription to exclude the shop, because they being officers under him, whatever they do in this kind, must always be supposed to be done by an authority derived from him, either positively granted as by his faculty, or else tacitly allowed; and this must hold in London as well as every where else. For although in that city the churchwardens take it wholly upon them to dispose of seats, yet usage can give them a title to do this, exclusive of the bishop. For when any controversy arises, they have no where else to go but to the bishop for a decision of it, the common law never meddling with this matter, but where a seat is claimed by prescription; and therefore whatever usage the churchwardens pretend to in any church, for the disposal of the seats in it, they must be understood to do this solely by the authority of the bishop, as officers under him, not by any of their own. *12 C. 105, 106. 3 Inst. 102. 2 Bulst. 105. Hob. 69. Roll. Ab. 288. contra.* In prohibition for a suit in the spiritual court, for a seat in a church, the plaintiff suggests, that it is an ancient seat belonging to such a house time out of mind, &c. and alleges that he and all those whose estate he hath, &c. repaired the church. Prohibition granted, *nisi, &c. Comber. 169.* If an usage to sit in a seat, time whereof, &c. be alledged in the spiritual court by the promonent, there they may well proceed to quiet the possession; but if a prescription be contested there, it is to be tried at the common law, and consequently in such case a prohibition will lie. *Jacob v. Dallow, 2 Ld. Raym. 755, 756.*

Tiverton chapel.

6. By statute 6 Geo. 2. c. 19. for making a chapel in the town of Tiverton, &c. a perpetual cure, &c. it is enacted, That the wardens of this chapel may let or sell, by writing or otherwise, the pews for a term not exceeding twenty one years, &c. to any inhabitant of the parish of Tiverton, or else the lease or sale shall be void. *Vide the act.*

Seats moveable
or fixed to the
freehold.

7. Though the seats in churches are generally reckoned as parts of the fabrick, it is upon supposition that they are fixed into the ground, as mostly they are; for if they be not fixed into the ground, but are loose and moveable, they are not then to be reckoned as parts of the fabrick, but are of the moveable goods or utensils of the church: And from this difference have arisen determinations of law, which have been made concerning them. But this jurisdiction extends only to placing or displacing the inhabitants of the parish; for the ordinary cannot grant a seat to any man and his heirs; nor can it be appendant to land, but to a house, *1 Inst. l. 2. f. 184. 1 Sid. 361. 2 Keb. 342.* because a seat in the church properly belongs to some house in the parish.

and not to the person, but as owner of the house; and if grant should be good to a man and his heirs, they would the seat, though they lived in another parish, which is unreasonable, and contrary to the original intention of giving seats in churches, which was for the inhabitants of the parish, that they might more conveniently attend the service of church: And certainly if the bishop cannot make such a grant, no private person can do it for the reasons beforementioned. *Roll. Abr.* 288. *Poph.* 150. 2 *Cro.* 366. See above 4. *ad finem.*

If there be a custom in a parish, that the churchwardens should repair the old seats, and erect new ones, and to appoint persons to sit in them, and they do erect a new seat in the body of the church, and appoint a certain person to sit there, and against the ordinary decrees that another shall have the seat; in this case a prohibition lies against him, for the custom hath fixed the manner of disposing the seats in the churchwardens. 2 *Roll. Abr.* p. 7. 2 *Roll. Rep.* 24. *Poph.* 140. But where there is no prohibition, and the ordinary doth not interpose, because there is no complaint, there the parson and churchwardens have power to place the parishioners in seats, to appoint pew-keepers, &c. In some parishes the churchwardens alone have that power by custom, as in *London*.

If a seat is built in the body of the church without the licence of the bishop, the churchwardens may pull it down, because it was set up by a private person without the licence of the bishop; but it hath been held, that if in removing such seat they cut the timber or break it, an action of trespass lies against the person. *Noy* 108. But this seems not to be law; for the freehold of the church being in the incumbent, when the person hath set a seat to it, 'tis then become parcel of his freehold, and consequently the right in him; so that the breaking the timber is not be prejudicial to the other who set it up, because he hath no legal right to the materials after they were fixed to the freehold.

Because seats in the body of the church are to be disposed of by the parson and churchwardens, therefore it was formerly, that a man could not prescribe for a seat there. *Moor*

Noy 78. *Latch* 116. *Palmer* 424. But now the law is altered as to this matter, viz. that one may prescribe for a seat in the body of the church, setting forth that he is seised of an estate in a house, and that he and all those whose estate he hath enjoyed, have time out of mind used and had a seat in the body of the church for themselves and their families, as belonging to the house, and that they repaired the said seat. And the reason why he must alledge that they repaired it is, because the freehold being in the parson, there must be some special cause for such a prescription: But as to this the court distinguished

Custom where
good against the
bishop.

When church-
wardens may
pull down seats,
and how.

One may pre-
scribe for a pew,
&c. in the
church, and
how.

guished between an action on the case brought against a disturber, and a suggestion for a prohibition: For in the first case you need not alledge that you repair, because the action is brought against a wrong doer; but upon a suggestion for a prohibition it must be alledged that you repair, because otherwise you devest the ordinary of that right which properly belongs to him. 12 Rep. 105. Noy 129, 130. 2 Roll. Abr. 288. 1 Sid. 69. Sid. 88, 203. Raym. 52, 246. 1 Lew. 71. 3 Lew. 2 Bulst. 51. Moor 378. 2 Roll. 24. Lutw. 1032. Prohibition to the spiritual court, where the suit was for two seats in the parish church of *King's Norton*; the defendant pleaded, that she was in possession of two ancient messuages to which the seats belonged; which plea being rejected by the court, the plaintiff now moved for a prohibition, which was opposed, that the church was new built by the parishioners, and for that reason there could be no prescription to the seats, but that they were in the gift of the bishop; so a consultation was prayed. The plea tendered by the defendant was such as could not be tried in the spiritual court, because they cannot hold plea of inheritance of the seats, nor of any thing which concerns freehold, so the prohibition must stand. 1 Mod. ca. law and 338. *Sweetnam v. Archer*. But a man may sue, if he pleads upon his prescription in the ecclesiastical court, to have his possession quieted (as for a seat in a church, which was the present case) which the ordinary ought to do upon the foundation of usage to have sat there; for one may sue upon a prescription in the spiritual court, if it be not denied, as upon a *modus vivendi*; or for a pension due by prescription, and the spiritual court will give judgment upon it. By Holt C. J. in the case of *Jacob v. Dallow*, 2 Ld. Raym. 756.

And for a seat
in a pew, and
how.

11. As a man may prescribe for a whole seat in a church, or choir, so he may prescribe for the first, second or other part, or place in a seat. *Carlton v. Hutton*, Noy 78. P. 424. And in these prescriptions there is not much exactness required, for if an action on the case is brought for disturbance of the plaintiff, &c. 'tis sufficient for him to alledge, that he is seised in fee of a messuage, &c. (without saying 'tis an ancient messuage) and that he and all those, whose estate he hath in the said messuage, had (without saying time out of mind) a seat in the church, which they used to repair as often as there was occasion, &c. This is well enough, because the action is founded on a wrong done by one who disturbed him in his possession, in which action the plaintiff will recover damages if the verdict is found for him. It is true, he may libel in the spiritual court and prescribe there for a seat, &c. but if the prescription is denied, a prohibition will be granted; if 'tis not denied, then the court may proceed to sentence; which if it happen to be against the prescription, in such case also a prohibition will lie, because

suit, being upon a prescription, the proceedings in it were *non judice* in that court; but this seems unreasonable, for he can be only to discharge the person of the costs which he is bound to pay. *Het. 92.*

12. As to seats in isles of churches, the law is, that if a man hath a house in a parish, and a seat in the isle of the church, which he hath repaired at his own charge, he shall not be distressed by the bishop; if he should, he may have a prohibition, because it shall be intended to be built by his ancestors, with the consent of the parson, patron and ordinary, and appropriated by them to his and their use; and if he is disturbed by any other person in sitting there, he may have an action on the case against him; but then he must prove that he repaired it: and so it was adjudged between *Hawtree* and *Dee*, for seats in a little chapel in the north part of the chancel of *Petworth* in *Sex.* For though no man can tell the true reason of a prescription, yet some probable reason must be alledged to gain a peculiar right, and none is more probable than repairing
12 *Rep.* 104. *Godb.* 200. 2 *Cro.* 366. *Sid.* 89, 201.

Cro. 604, *Bridgman* 8. *Palm.* 46. And this will intitle a man to a seat in an isle, though he lives in another parish; and therefore where the plaintiff sets forth that he had an ancient effluage in the parish of *H.* and that he and all those whose estate he had in the same house, had a seat in the isle of *B.* this is a good prescription for a seat in an isle, because he or they might build and repair it; though it is not a good prescription to have a seat in *naïve ecclesiæ* of another parish. *Sid.* 361.

13. As to the chancel, the ordinary hath no authority to place any one there, for that is the freehold of the rector: And this is the church; but he repairs the one and not the other. And this is for this reason, (though some are of a contrary opinion, *Index Jur.* 22. c. 224.) that an impropriator hath the chief seat in the chancel; and repairing of the chancel is a discharge from contributing to the repairs of the church, unless for lands which are not parcel of the parsonage. 2 *Roll. Rep.* 211. But if there be room for any other seats, the bishop can grant faculties for the building and disposing of them; in the chancel, as well as in the body of the church; only if the bishop doth not interfere, then the parson may dispose of the seats in the chancel, in the same manner, as the churchwardens do of those in the body of the church, because of his repairing it. But if any controversy arise, then there lies an appeal to the bishop from the one, as well as from the other. See *Watson*, c. 39. But as to this matter, the case is very peculiar in the city of *London*, for there the churchwardens repairing the chancel as well as the body of the church, do equally dispose of the seats in both; but it must be still understood with the same subordination to the bishop, as in other churches. But yet a man may prescribe to have a seat

Repairing will intitle a man to a seat in the isle, though he lives in another parish.

Who hath a right to the seats in the chancel.

here,

here, as belonging to an ancient messuage. *Noy* 133. And is said churchwardens cannot prescribe for a right for the ordinary's desisting from acting, as they are not capable of inheritance. *Roll. Abr.*

14. If a man set up a new pew or other thing in a church, may not afterwards remove them, for they thereby become church goods. *Stat. 10 H. 4.*

Churchwardens to see that parishioners come to church, and carry themselves reverently, &c.

15. Besides the care of the repairs of the church seats, Churchwardens are to see that all parishioners duly resort to their parish church, and there continue during the time of divine service. *1 El. c. 1.* They ought to permit no person to cover his head in the church, except he have some infirmity, and then with a cap. *Can. 18.* They are not to permit any stand idle, walk, talk, or make any noise in the church, or contend about places; and they are to chastise disorderly boys &c. They may apprehend those who disturb the minister, and justify the appealing any disorder in the church or church-yard.

Disturbing the minister.

16. If any disturb the minister officiating divine service, shall be imprisoned three months, and fined twenty pounds, *stat. 1 W. & M. c. 18.* And any person may be indicted for indecent or irreverent behaviour in the church, &c. *6 Ed. c. 4.*

Bells ringing.

17. They are to keep the keys of the belfry, and to take care that the bells be not rung without good cause to be allowed of by the minister and themselves. *Can. 88.* Churchwardens are also to suffer no man to preach within their churches or chapels, without producing their licence; and to take care that persons excommunicated be kept out of the church. *Can. 85.*

Preaching without licence, &c.

Excommunicate persons.

Neither churchwardens nor the ordinary can give licence to bury in the church, nor any but the parson who has the freehold in him.

Burial.

Church and church-yard.

18. The churchwardens are also to take care that the church with all its chapels, isles and parts, be wholly kept for those sacred uses to which it is consecrated; and that therefore no interludes, plays, feasts, church-ales, musters, markets, temporary courts or leets, lay juries, or any other profane usage be permitted or allowed therein, or in the church-yard belonging thereto. *Sparrow's Can. 236.* And on sacrament days they are to provide bread and wine for the holy communion, at the charge of the parish. And also to observe who they are that absent themselves from it, and present them for the same at the next visitation. *Can. 20, 21. Comb. 76.*

Communion.

Where the right of burial ground lodged.

19. Though the freehold of the church and church-yard be in the minister; yet as he can hinder no parishioner from having a place in the body of the church for the hearing divine service, so neither can he hinder any such from having a place in the church-yard for the burial of his dead; but for burying in the church

church it is otherwise; for none can be buried there without the leave of him who hath the freehold; for the freehold being his, the power of granting leave to make a grave there is solely in him. 2 Cro. 366. Noy 104. And the fee for breaking the soil belongs to them on whom is the burden of repairing the pavement; that is, to the parson for the chancel, and to the churchwardens for the body of the church. 3 Keble 504, 523, 27. 1 Vent. 274. But if the burial be in an isle which the owner doth prescribe to, and which he constantly repairs, there Where if buried in an isle, the fee is due for breaking the soil, either to the parson or churchwardens; because neither of them is to make good the pavement, but he alone who owns the isle. Only, if there be customary payment in this case to the minister (as it is reasonable there should) it will be supposed to have been reserved in the original grant, in consideration of that part of the churchyard which was taken in to build the isle upon; and then the minister will have as good a right to that payment as the other the isle. No fee can be due of common right for christening or burying; but there may be by custom. But then a custom that any person to have a fee for christening a child, when he hath it not, it is not good: For it is like the case in *Hobart*, where a person dies in one parish and is buried in another, the parish where he dies shall not have a burying fee. *Burdeaux* Dr. *Lancaster*, 1 Salk. 332. *Cases B. R.* 171. *Dean and Chapter of Exeter's case*, 1 Salk. 334.

20. Although the parish be in different counties, yet the authority of the churchwardens is the same in every part of it, as if it had been in the same county; though it is otherwise as to constables, overseers of the poor, and other parish officers. For where there are different tithings, different hundreds, and different counties, there must be different constables and different overseers of the poor, although in the same parish; and they must account for their offices before different justices, and at different sessions, and different assizes. But the churchwardens being officers in ecclesiastical affairs, must follow the division of ecclesiastical jurisdiction, which is into dioceses, archdeaconries, deaneries, and parishes. And therefore, where there is the same parish, the same deanery, the same archdeaconry, and the same diocese, the same churchwardens must serve for the whole parish, and they have the same power of executing their office in every part of it, in how many different counties, or different hundreds soever it be; and must at the same visitation, whether by the bishop, or archdeacon, or other ordinary, account for the charge of it. And because the church is that wherein all the members of it are united, of that deanry, and of that archdeaconry, and of that diocese, must the whole parish be reputed to be in which the parish church stands.

Parish in different counties, churchwardens authority the same in every part of it, as if all in one county.

The method of
settling lands in
trust for a parish.

21. Although the churchwardens be a corporation for goods of the church, yet (as has been said) they are not so for lands, 1 *D. A.* 787. p. 1. *Kelw.* 32. and therefore, if one gives lands to the parish for the use of the church, it must not be to the churchwardens and their successors; but it should be to feoffees in trust to the use intended: Which is from time to time to be renewed as the trustees die off; not by a new election made by the survivors: For that alone is not sufficient to vest the trust in them. But the best course will be, that the trustees do by deed convey their right and trust over to some single person, who shall immediately by another deed convey back again to them, in conjunction with as many other new trustees as shall be thought fit to be added to them, still preserving the lands to the use of the original donation. For if the trust should by survivorship be vested in one only surviving trustee and he should die before the said trust be legally transferred to others, the lands will descend to his heir, and it may cost the parish a chancery suit to bring back the trust again; but see *sect.* 23.

22. And here I cannot forbear observing, that when lands are given to the repair of the church in general, it seems reasonable that this should be construed to extend to the repair of the chancel, as well as of the rest of the church: For the whole church doth equally include the chancel as well as the nave and body of the church, unless the donation be to the body of the church only: In which case the chancel and the minister ought to be excluded.

In London,
churchwardens
are a corporation
for lands, &c.
See above, *sect.*
21.

Another custom
in London, as to
the choice of
them.

23. But whereas it is above said, that churchwardens are a corporation only for goods to the use of the church, and for lands, the city of *London* is in this to be excepted; for there, by special custom, the churchwardens with the minister make a corporation for lands as well as for goods, and may as such, buy, purchase, and take lands for the use of the church, and sue and be sued on the account thereof, as well as for goods and chattels. And this is alledged as a reason for the other custom which hath also obtained in *London*, for the parishioners there choose both churchwardens exclusive of the minister, who is there excused from repairing the chancel. Besides, if the minister there should choose one of the churchwardens according to the canon, he with the said churchwarden, as the major part of the corporation, may dispose of their lands to the damage of the parishioners; and therefore it is not safe there to lodge great a trust in him. 2 *Cro.* 325. 3 *Cro.* 551, 552. 1 *Inst.* fol. 3. *Lane* 22. 1 *Roll. Abr.* 339.

C H A P. XXVI.

Of Rates for repairing the Church, &c.

AS for rates made either for repairing the church, or How rates for
 fencing the church-yard, they are to be made by the repair of the
 churchwardens, who are to give a general summons at the church are
 church, that the people may meet at a certain time and place made.
 that purpose, and the majority of those who meet upon such
 summons, shall conclude the whole parish; but first, the pari-
 shioners, and not the churchwardens, are to assess the rate.
 The parson, and not the parishioners are to repair the chancel;
 except in London, where by the custom the parishioners repair the
 chancel also. *Pense v. Prowse*, 1 *Ld. Raym.* 59. But if they
 neglect to meet, *vide post*, §. 22.

If a rate is illegally made or imposed by the ordinary,
 without the consent of the parishioners, yet if they agree to it
 afterwards it shall bind.

Now these rates must be made upon the whole parish, and Chancel not in-
 upon a particular person: And made to raise money to re- cluded in the
 pair the church, though that word may comprehend the chancel. church.
 If the money is laid out to repair the chancel, the parish are
 to allow it in the churchwardens accounts; but if 'tis ex-
 plicitly made for the repair of both, 'tis illegal, and the temporal
 court will prohibit any proceedings to recover it. 1 *Mod.* 236.
 A libel was in the spiritual court for a rate, for some things law-
 ful and for others not warrantable by law; a prohibition was
 granted to the whole suit. *Carth.* 360.

If a rate is made on lands to repair the church, and for Prohibition
 repairing the church-house and relieving the poor, &c. 'tis too when to be
 late to move for a prohibition, after sentence in the spiritual moved for.
 court, and to suggest, that several of these matters are not cog-
 nizable in that court.

When these rates are made, 'tis the proper business of the Churchwardens
 churchwardens to collect the money; but by custom the con- are to collect the
 vey may be bound to do it: And therefore if a libel is brought money, &c.
 against him for refusing to collect it, a prohibition shall not go,
 because the spiritual courts may try this custom. *Hardres* 510.

Concerning repairs, the 86th canon requires, that every There must be a
 person who hath authority to hold ecclesiastical visitation, shall visitation once in
 visit the churches within his jurisdiction once in three years, three years.
 either in person, or cause it to be done; and he is to certify the
 defects to the ordinary, and the names of those who ought to
 repair. These repairs must be done by the churchwardens at
 the charge of the parishioners, and the ecclesiastical judge may

excommunicate any, or all of them, for any neglect in not repairing. 1 *Mod.* 194.

Question whether repairs are a real charge on lands, or on persons only.

7. It hath been a question, Whether this is a real charge upon all the lands in the parish, or only upon the persons in respect of their lands? And the better opinion is, that 'tis a personal charge by reason of the lands. For where the owner or occupier refuses or neglects to contribute to repair, &c. the land cannot be sequestred, but the persons may be excommunicated. For the ordinary hath a jurisdiction over them, but not over their lands; he is not to meddle with the possessions of laymen, but to proceed against them by ecclesiastical censures. 2 *Mod.* 255. 2 *Vent.* 35. 1 *Mod.* 104. However, 'tis such a charge on the lands, that no custom can be good to discharge it. *Hutley* 131. 2 *Roll. Rep.* 463.

See below, sect. 45.

They are no tenants.

8. If a man live in one parish, and hath lands in another which he keeps in his own hands, he shall be charged to the repairs of the church where his lands are, and not where he liveth; for though the charge is upon the person, yet 'tis in respect of his lands; and as to this purpose he is a parishioner where his lands are, and not where he lives. *Cro. Eliz.* 650. 843. 2 *Roll. Abr.* 289. 5 *Rep.* 66. And if he lett his estate to a tenant, the tax shall be set on the farmer, because it may not be known who is landlord; but he is not to pay the whole, for he may plead in the spiritual court, that he is only the farmer, &c. And he is to pay no more than what the land is worth above the rent; and the landlord must pay according to the rent reserved. 2 *Roll. Rep.* 270.

Custom triable at law.

Cause of appeal.

9. If lands lie in two parishes, and the owner is sued to contribute to the repairs of the church in one of the parishes, for that part of his lands which lies in the other parish, suggesting a custom for it, which was denied by the defendant, this custom shall be tried at law. 2 *Roll. Abr.* 308. And when the libel is for not repairing, &c. 'tis not sufficient for the defendant to suggest, that other people have lands in the same parish which are not charged; for if 'tis true, 'tis a good allegation against the libel in that court, because the rate ought to be made upon the whole parish; and 'tis a just cause to appeal from a sentence there, but not for a prohibition. *Roll. Abr.* 290, 291. 2 *Roll. Rep.* 262, 206.

Defendant compelled to answer upon oath in spiritual court.

10. The spiritual court hath original jurisdiction of repairs of churches; and rates for that purpose, being an incident to repairs, they have the jurisdiction in those cases; and when a suit is brought in that court against the defendant for a proportionable part of such a rate, he may be compelled to put in his answer upon oath, whether he hath paid or not; for the usage being for them to require oaths about payment of rates, hath likewise made it the law of the court. 2 *Lev.* 247. 1 *Vent.* 339.

1. We have some ornaments in our churches, 'tis true, Of ornaments
ough but mean in respect to those in other nations; especially in churches,
ong the *Roman Catholics*, who spare neither art nor cost to
rn their churches with the utmost magnificence, while the
rmed grudge to spare from their own pride such ornaments
will scarce make their churches neat and decent; and for
e the charge is upon the personal estates of the parishioners,
not upon their lands, so that if a rate is made to charge the
s, a prohibition will be granted. 2 *Roll. Abr.* 291. 2 *Roll.*

262, 270. See below, *sect.* 22, 25. 'Tis for this reason Parishioners
a person must be charged where he lives, and not where chargeable with
lands are; for if the libel is for ornaments, 'tis a good plea them.
y, that he was not a parishioner there at the time of the rate
e. 2 *Roll. Rep.* 292.

2. The rate must be made upon all the parishioners of abi- Majority bind
and none are to be excused. And 'tis the majority in this the minority,
as well as in the other for repairs of the church, which
lude all the rest. But then they must be assembled at a ve-
after publick notice; therefore where a greater part agreed
ave a fifth bell, and the less number disagreed, yet the
e parish was concluded. 2 *Roll. Abr.* 291.

3. But though generally lands ought not to be rated for or- In some cases
ents, yet by a special custom both lands and houses may be lands are
e to it; and so it was held *Hill. 9 W.* 3. in *B. R.* between chargeable.
skins and *Rowse*, viz. The churchwardens of the parish of
Edmund on the bridge of *Exeter*, libelled against the defen-
setting forth an antient custom within the parish, that they
their predecessors had adorned the inside of the church at
ublick charge of the owners and occupiers of antient houses
n that parish, by a rate made by them with the consent of
major part of the parishioners, having respect to the annual
of the said houses; and this was held to be a good custom.

When a rate was made on lands to repair the church; to In what cases
a new clock and chimes; for bread and wine at the sacra- a prohibition
; for clerk's fees; for dividing the church-house into se- was denied,
rooms for the use of the poor; for the relief of poor pri-
in the *Marshalsea*, and for expences at several visitations;
ourt would not grant a prohibition, though it was objected,
his rate was made for several matters, of which the spi-
court hath not any jurisdiction, viz. to repair the church-
and for relief of poor prisoners; and likewise for chimes,
are ornaments, and for which lands ought not to be rated.
ue it was after sentence, and an appeal to the arches;
such cases a prohibition is always denied, if nothing ap-
n the libel itself to oust the spiritual court of jurisdiction.
w. 1019.

If a church is so much out of repair that 'tis necessary to Major part of a
down, in such case, upon a general warning to the pari- parish may re-
rishioners, build the
church.

parishioners, having first obtained the consent of the ordinary to do what is needful, the major part meeting may make a rate for pulling down the church and rebuilding it on the old foundation, making vaults, &c. and it shall be good; and if any parishioner refuse to pay his proportion, the churchwardens may bring libel against him in the ecclesiastical court. And it has been held, that if a parish be increased, the greater part of the parishioners, with the consent of the bishop, have power to raise a tax for the necessary enlarging it, as well as the reparation thereof. 2 Mod. 222. 1 Mod. 237. But *Qu.* of this; for it is used to procure an act of parliament on such occasions, containing a clause for altering the site; which would be needless if it might be altered by the parishioners with the bishop's consent. Upon a motion for a prohibition, to stay a suit against J. S. for not paying a tax imposed by the churchwardens, and other parishioners, for building the church of St. Anne's in Westminster per Holt chief justice, a suit may be in the spiritual court for nonpayment of a tax assessed for repairs of a church, but not for building a church. 1 Ld. Raym. 512. Churchwardens of Anne's Westminster.

Communion
table, &c.

15. The communion tables are to be kept in repair in churches, and covered in time of divine service with a carpet, &c. and the ten commandments must be set up at the east end of every church or chapel, and other chosen sentences of scripture upon the walls. And at the common charge shall be provided a strong chest with a hole in the upper part thereof, to collect the alms for the poor, which is to have three keys, one kept in the custody of the parson, and the other two by the churchwardens, and the money collected shall be quarterly distributed in the presence of the chief of the parish. Can. 82, 83. And by the 85th canon, the churchwardens shall take care that the churches, *i. e.* all parts of them, except the chancel and priories, or chapels belonging to private persons, be well and sufficiently repaired, the windows well glazed, and the floors paved, plain and even. And the churchwardens of every parish are bound to provide at the charge of the parishioners, a communion vessels and furniture, vestments for the minister of divine service, a decent pulpit, a convenient seat for the minister to read service in, a book of common prayer, a bible, a book of homilies, and a parchment book for the registering of christenings, weddings and burials; (for registering marriages see before chap. 13. sect. 24. &c.) besides which, though not absolutely necessary, yet the parishioners may be bound, by an agreement of the majority of them met in vestry, to furnish bells, pulpit-cloth and cushion, organs, convenient for kneeling at prayers and sacrament, &c.

What ornaments, &c.
Churchwardens
are obliged to
provide.

Church-yard to
be duly fenced.

16. Though the freehold of the church-yard be in the parson, yet being the common burying place of the parishioners,

the fencing and keeping it in good order belongs to the parish, and the churchwardens are to take care of it accordingly. The spiritual court hath jurisdiction to proceed against parishioners for not repairing the fence of the church-yard. *Comber. 298.*

And if the owners of lands adjoining to the church-yard have Owners of lands
 spent time out of mind to repair so much of the fence thereof as contiguous
 adjoined to their ground, the churchwardens, if they neglect it, liable, when.

have a good action against them at common law; but if they sue in court christian, a prohibition will be granted, because it is in order to charge a temporal inheritance. *2 Inst. 489. 2 Roll.*

Br. 289. Comber. 298. Though generally the cognizance of rates made for the reparation of churches and church-yards belongs to the spiritual court, and no prohibition will lie where it punishes for neglect of it. *13 Ed. 1. c. 1.*

17. An impropriator of a rectory or parsonage, who is bound to repair the chancel, is bound also to contribute to the reparations of the church, in case he hath lands lying in the parish. *Roll. 211.* And the inhabitants of a precinct where there is a chapel, though it be a parochial chapel, and though they do

An impropriator having lands in the parish. So where a chapel in a parish.

repair it, yet they are of common right contributory to the repairs of the mother church, unless they can plead a prescription time out of mind, or by composition. *2 Roll. 265. Hob. 66.*

18. In case the hall of a company be rated to the repairs of church, the spiritual court may proceed against the master and wardens of the company, if the rate is neglected to be paid. *Mod. 236. 2 Mod. 222.*

Hall of a company.

19. A man had a lease of a stall in a market-town, where he sold goods once a week, but lived in another parish, he shall not be charged to the repairs of the church in the market-town. *Roll. 228.*

But not tenant of a stall in a market.

20. Though the majority of the parishioners at a meeting may make a rate to oblige the whole parish, for altering the place of the communion table, and carrying it into the chancel, and for raising the ground for going up steps to it (for they are compellable to put things in decent order, and there is no rule for decency but the judgment of the majority of the parish) yet the majority shall not bind the rest, in repairing and adorning the chancel, because that lies on the parson. *Parishioners not to repair the chancel.*

21. If those of a chapelry have always christened and buried within themselves, they may prescribe to be exempt from repairing the mother church; for in such case, the chapel shall be intended to be coeval with the church, and not built since for their ease. But if there is a chapel of ease, which one part of the parish hath always used to repair, and to hear divine service there, but bury at another church, they must contribute to repair that church. Where the prescription is in repairing a chapel, &c. 'tis necessary to alledge that it hath parochial rites; for, if but one is omitted (as burial) they shall contribute to the

Chapels, when exempt, or not.

mother church. *Comber. 132.* And where a chapel had parochial rights, but had been forty years out of repair, and no divine service in it for all that time, the court denied to prohibit a suit in the spiritual court to compel to pay the repairs of the mother church, though chapelwardens had been yearly chosen. *Comber. 148. 3 Mod. 268.*

Parish unequally rated, to plead it in the spiritual court.

Bishops cannot appoint commissioners to make a rate.

Rate by churchwardens without the parishioners, when.

A rate pro reparatione ecclesie, generally, is good.

What are church reparations.

What are church ornaments to be charged on parishioners.

Tho' lands may be liable by custom.

To what the churchwardens must have the

22. If the parish is unequally rated, those who are grieved must plead it in the spiritual court, being sued there; for they cannot have a prohibition, it being of ecclesiastical cognizance. *2 Roll. Abr. 291. 1 Vent. 367.* But the bishop of the diocese cannot appoint commissioners to rate a parish for repairs of their church. *2 Mod. Rep. 8. Curtis's case.* The spiritual court may, by their ecclesiastical censure, compel the parish to repair the church; but they cannot appoint what sums are to be paid for that purpose, because the churchwardens by the consent of the parish, are to settle that. And if there be publick notice given to the parishioners, and they will not come, the churchwardens may make a rate without them. *Comber. 344.* And if more be raised than is necessary, the churchwardens are accountable for the overplus, they not being able to compute to a shilling. If any of the parishioners refuse to pay their proportion, they may be libelled against in the spiritual court; and if the libel alledge the rate to be *pro reparatione ecclesie* generally (though in strictness *ecclesia* contains both the body and chance of the church) yet by the opinion both of the court of common pleas and of the exchequer, it shall be intended that the rate was only for the body of the church. The bishop, much less the chancellor, cannot set a rate upon the parish, but it must be done by the parishioners themselves.

23. Church reparations extend to church-yard walls, the walls of the church, and steeple, the floor, the pulpit and the pews; the windows, iron bars, and glass; the roof, timber with lathes, nails, &c. the covering of lead, tiles, &c. the doors with locks and keys, stairs, floors, bells, wheels and ropes in the steeple.

24. The ornaments for which parishioners are chargeable, are the communion table and coverings of the communion cups, the bread and wine, candles, the bible and other books appointed to be read in churches, the surplice, pulpit-cloth and cushion, the clerk and sexton's wages, &c. washing the church-linen, and monies disbursed by churchwardens about the parish business; these are to be raised by a rate or tax on the parishioners regularly, and not on lands. *2 Roll. 291.*

25. But though lands ought not generally to be taxed for church ornaments, yet by custom both lands and houses may be liable to it. *2 Inst. 489. Cro. Eliz. 843.*

26. If the churchwardens erect or add any thing new in the church, as a new gallery, &c. where there was none before, they

They must have the consent of the major part of the parish, and consent of the
to the licence of the ordinary. 1 *Mod.* 237. ordinary.

27. It hath been already mentioned, that in the city of *Lon-* The same custom
by immemorial custom, the parishioners repair the chancel at Norwich, &c.
well as the body of the church; and this custom is also in the as in London.
of *Norwich*, and some other cities and large towns in *Eng-*
land, where there are no tithes to be charged with this repair, or
be sequestred if neglected. Also in some churches the vicar is

In some places
special composition bound to this repair, and then the vicar the vicar repairs
the freehold of the chancel, as well as of the body of the the chancel.

church and church-yard; the former by virtue of this compo-
sition, the latter by virtue of his induction. For every vicar,
when he is inducted into the church, takes possession of the body
of the church and church-yard as of his freehold, and is then as
were by livery and seisin admitted thereto, as the rector is by
his induction to the whole church. *Watson* 304. But though

Churchwardens
must present if
parsonage house
be out of repair.
the churchwardens are not charged with the repair of the chan-
cel, yet they are with the supervisal both of that and the mini-
ster's house, to see that neither of them be permitted to dilapi-
date and fall into decay; and when any such dilapidations shall
happen in either of them, if no care be taken to repair them,
they are to make presentment thereof at the next visitation.

28. Antiently, both the church and church-yard were re-
served out of the revenues of the church; and a fourth part of
them, according to the primitive and well-known division of
them, was always set apart for this purpose. But now it is the

And they must
see that the
church-yard be
kept neat and
clean.
churchwardens duty to see that not only the church, but also the
church-yard be kept in decent and fitting manner; that it be
cleared of all rubbish, muck, thorns, briars, shrubs, and every
thing else that may annoy the parishioners when they come into
it, or be any hindrance to them in their burying the dead; that
ditches or gutters be made through it, or any thing else be
permitted, which may be unbecoming the place which is
consecrated and set apart to be a repository for the bodies of the
faithful, which were once the temples of the Holy Ghost.

29. They are also to see that the gates, stiles and doors lead-
ing into the church-yard be kept in due repair. But if any one
with a private door leading into the said church-yard, or a private
way through it, the parish is not to be put to charge about these,
they must be repaired by him that hath the use of them. But
it is to be observed, that no one can make any such private
door into the church-yard, or any such private way through it,
without the consent of the minister, whose freehold the church-
yard is, and a faculty also from the bishop for the same. But

And the gates
and stiles in good
repair.
No door into the
church-yard
without licence
from the bishop.

But No door into the
church-yard
without licence
from the bishop.
the inhabitants of any ancient messuage, next adjoining upon
the church-yard, have immemorially, they and their ancestors,
had a way through the said church-yard, and constantly have
used the same, they can prescribe thereto, in respect of the
said

But persons may prescribe for a way, &c.

said messuage; and so if the owners of any lands adjoining the church-yard have immemorially, they and their ancestors had a way thereto through the said church-yard, and constantly have repaired the same, with the gates and stiles leading into it they can also prescribe thereto, in respect of the said land 2 *Roll. Abr.* 265. *Comb.* 298.

Trees in the church-yard belong to the parson, how.

30. As the soil of the church-yard is the minister's, so also are the trees growing therein; but he is not to cut them down unless for the necessary repair of the chancel, or else that he shall think fit, out of kindness to the parishioners, to allow them to them for the repair of the body of the church; but when they use to be topped, the toppings belong to the minister. Statute 35 *Ed.* 1.

'Tis best for churchwardens to have the consent of the parish in great repairs, &c.

31. Although perhaps churchwardens need not the advice or consent or authority either of the minister, parish or ordinary as to the repairing or amending any thing which belongs either to the fabrick, church-yard or utensils of the church, but are themselves sole judges of what is needful to be done herein, being invested with the authority of the ordinary, and the whole trust of the parish, for this purpose, on their first entering of the said office: Yet it is very proper and advisable, for the greater content and satisfaction of the parish, that they do not enter on any great and chargeable repairs, without first taking the advice of their neighbours, who are to bear the charge of them. But if they will act without any such advice, by virtue of their office, they have power and authority so to do; and though the money be imprudently and improvidently, yet if it be truly and honestly, laid out, they must be reimbursed again and the parishioners can have no remedy herein, unless some fraud or deceit can be proved against them; which must and will be at all times redressed. Which is spoken by way of caution, that parishioners may be warned how they trust such men in this office, who are not fit for it; or if they do, not fruitless to commence suit against them afterwards, for what they can have no redress. Though if through improvidence, indiscretion or negligence, they waste the church goods in their custody, or otherwise much damnify the parish, they may, on proof thereof, by the authority of the ordinary at any time be removed, and others chosen in their stead. 8 *Eliz.* 4, 6. *Fine lib.* 2. c. 17. 13 *Co.* 70.

But if they will not, parishioners have no remedy but in cases of fraud.

And then they may be charged.

But for new additions, must have parishioners consent.

32. But if the churchwardens add any thing new, either to the fabrick, church-yard, or utensils, which was not before they must have the consent of the major part of the parish, or else the parishioners may refuse those disbursements in their account; for to such expences they cannot be charged without their consent: Nor will the law, in this case, allow any rate to be good that shall be made in order to it. *Jeffrey's case*, 5 *C.* p. 66, 67. *St. Saviour's parish's case*, *Lane* 21. *Hetley* 6.

Little

Littleton 263. *Popham* 137. 1 *Mod. Rep.* 194 and 236.

2 *Mod. Rep.* 222. 1 *Vent.* 167. And if the new added parti- And also licence
culars be in the church, the licence of the ordinary is also neces- from the ordi-
sary, as well as the consent of the parish, before they can be nary.

legally and justifiably added or new erected there; and there-
fore though the major part of the parish be consenting to the
new addition, and thereby the churchwardens may be impower-
ed, as far as in the parishioners lieth, to make and levy a rate
for the reimbursing themselves of the charges; yet if any one
person in the parish dissent from it and refuses payment, they
can have no remedy against him, because the thing being ille-
gally done, and without that authority which the law requires to
warrant it, no rate will be judged legal which shall be made for
it. But if the thing which is added, be not in the church, nor

is added to the fabrick or its appurtenances for any religious But not if not in
use, but only for the benefit, convenience, or curiosity of the the church.
parishioners; as a clock, a dial, chimes, an additional bell, &c.
in such case the licence of the ordinary is not requisite; but it
will be sufficient if the major part of the parish be consenting
thereto.

33. But if the new erection be in the chancel, the leave of If in the chancel,
the parson is also necessary, because the chancel belongs to him, must have con-
and is a part of his glebe; and therefore, if the churchwardens sent of the par-
set up a new seat in the chancel, or place rails there at the altar, son.
they must have not only the consent of the parish, but also the
leave of the parson, as well as the licence of the ordinary, be- Any one with
fore it can be legally done. And therefore if the parson with proper consent
the licence of the ordinary, or any other person with the consent may set up rails
of the parson and licence of the ordinary, have a desire to set up round the altar.
rails at the altar at their own proper costs and charges, without
requiring the parish to give any thing towards it, the parish is
no way concerned, either to give or deny their consent thereto.

34. The rails at the altar being not required by any law, or How church-
of themselves absolutely necessary in any church, as they cannot wardens are to
be first erected without the consent of the parish and parson, and do it.
the licence of the ordinary first had thereto; so neither after
forty years disuse (the utmost limit of ecclesiastical prescription)
can they be again restored, without the same consent and licence
to authorize the churchwardens to do the thing, and levy a rate
upon the parish for it. And therefore though it be very decent
and fitting, that there should be rails in every church to keep
the communion table, at which the highest mystery of our holy
religion useth to be celebrated, from that profanation which it
may otherwise be exposed to (and which is all that is intended
by them;) yet since this is a matter which often raiseth great
contest and disturbances in parishes, among weak and scrupulous
persons, it is proper that churchwardens have this advice given
them,

them, that they enter on no such attempt, unless in such a legal way as may justify them in the doing of it.

Rector or vicar
not charged for
glebe.

35. No parson or vicar can be charged to the repair of the church in any parish by reason of their tithes and glebes therein, because out of them they are bound to repair the chancel; but if they have any other estate in the parish, they are chargeable for that as well as other parishioners; and although one of them only repairs the chancel, and the other be exempt, yet if either of them do it, both are discharged from all rates to the church. But if no composition appears for the laying it on the vicar; of

But they may if
the glebe lies in
another parish.

common right it belongs to the parson to do it: And if the glebes be out of the parish (as sometimes they are) their being glebes in this case cannot exempt them from being charged to the repair of the church in that parish where they lie: For no glebes are to be excused church repairs, but such as belong to the church which is to be repaired, not those which belong to another church out of the parish in which the land lies. For, in that parish no repairs of the chancel lie upon them; and therefore they are on the same foot with the other lands of the parish; and consequently must be charged equally with them to all the burdens of it.

Those not rated
to the poor
ought not to be
charged, &c.

36. All those who are so poor as to be excused from paying to the poor's rate, by reason of their poverty, ought also to be excused from paying to the church rate for the same reason; and those who pay nothing to the church, ought not to have any vote in any affairs relating to it. But this must not be understood of the minister who hath a special duty incumbent on him in this matter, and must be responsible to the bishop for his care herein; and therefore in every parish meeting he presides for the regulating and directing this affair: And this equally holds, whether he be rector or vicar.

What church-
wardens must do
if they can't col-
lect the rate
within their
year.

37. If the churchwardens defer to make or gather their rate till they are out of their office (as is through mistake or negligence too often done) they are then deprived of all legal authority of doing either; and therefore they ought to take care, after they have well surveyed and computed the repairs, to make and gather the rate as soon as they conveniently can, and within the time of their office prosecute all such who refuse to pay what they are rated to it; or at least present them in their last presentment at the *Easter* visitation, when they go out of their office. But if it happen that there be no such prosecution begun, or presentment made before they were out of their office, then they may, on their giving up their accounts, pass over their arrears, with the rate on which they are due, to their successors, who have full authority to sue for and recover the same; all such arrears being a debt due to the parish, which they are by their office to take care to recover for them.

38. Two justices (*quorum unus*) may make their warrant both the present and subsequent churchwardens, to levy all sums and arrears of every one who shall refuse to contribute according to assessment, and in default of distress, commit them to gaol, until payment be made. *Dalton 155. This is delivered for law*

Mr. Dalton, but I do not remember any other authority for it.

39. Houses as well as lands are chargeable to these repairs, Houses as well as in some places houses only, as in cities and large towns lands are here there are houses only, and no lands to be charged hereto. chargeable.

Wiley 130.

40. There are different opinions, whether lands occupied by Whether those who live out of the parish, shall be charged only towards who live out of the repairs of the body of the church and church-yard, with their the parish shall be charged for countenances; or whether they shall not be charged towards lands in the parish, for ornaments and incident charges of the church also. The parish, for ornaments, &c.

Roll. Rep. 270. Godolphin's Repertorium, c. 12. sect. 29, 34,

Degg, c. 1. p. 12. But now the practice generally goes according to the latter opinion; namely, that they shall be charged to both; and the ecclesiastical judges as well as the temporal, for the sake of the ease and convenience which accrues from the making of one levy for all, give countenance hereto, and begin to treat the contrary opinion as obsolete and of doors. Concerning this whole matter, see *5 Co. 67.*

Brownl. 10. 1 Bulst. 20. 2 Roll. Abr. 291. Degg, c. 12.

Godolphin's Report. Canon, c. 12. sect. 23, 26, 29, 34. 41.

ib. 132.

41. And a man living in one parish, and holding land in New casting off; whether, may be taxed towards the new casting of the bells of bells. parish where his lands are; for they are more than ornaments.

42. And when a church rate is to be made, it ought to be Church rates on all by an equal pound rate, according to the yearly value ought to be made of the said lands or houses, without grieving or overcharging and laid equally.

one, or sparing and easing another, or leaving any out of rate who ought to be charged to it. For if any be over- charged, or others under charged, the ordinary will condemn

wrong done, whenever it comes before him; but if any one If not, the ordinary will redress it.

left out, who ought to be charged to it, 'tis an injury to the parish; and this is a sufficient reason for the ordinary (on complaint made to him) to quash the whole rate, and send the churchwardens to make a new one. And in all these rates it

be fairest for the churchwardens not to assess themselves, but churchwardens

have this to be done by the parishioners, who concur with not to assess themselves, &c.

in making the said rate. A justice of peace cannot impose a tax for the repairs of a church. *1 Mod. 194.*

A Rate or Tax for the Repairs of a Church.

43. **W**E the churchwardens, overseers of the poor and parishioners of the parish of F. in the county of M. whose names are subscribed, do hereby rate and tax all and every the inhabitants of the parish, &c. here under mentioned, for and towards the repairs of the church of the said parish, in the several sums following, viz.

					l.	s.	d.
A. B.	For one tenement, &c.	—	—	—	0	8	6
C. D.	For his lands called, &c.	—	—	—	0	7	0
E. F.	For one messuage	—	—	—	0	5	0
G. H.	For one tenement, called, &c.	—	—	—	0	4	6

J. K. } Churchwardens.

L. M. }

N. O. }

P. Q. }

R. S. }

T. U. }

Overseers of the poor.

Parishioners.

Parson and vicar
are exempt for
their tithes and
glebes, &c.
Prescriptions for
chapels, &c.

44. If any plead a prescription to be exempt from those rates in respect of any of their lands or houses, it cannot be allowed without special cause shewn. A patron, as in the right of the founder, may prescribe not to pay to the repairs of the church, by reason of the foundation; and if he hath been immemorially freed, it will be a good reason for the discharge. And so if a hamlet having a chapel of ease, which they constantly resort to, and have always repaired, have instead of being rated to the mother church equally with the other parishioners, immemorially paid a set annual sum in lieu of it; this will be allowed to be a good prescription; for it will be supposed that it was originally done upon an agreement made upon some just consideration with the whole parish; and they have a power to bind their successors thereto. But if there be no such payment acknowledged, the prescription will not be good. *Hob. 67. Noy 41. 2 Roll. Abr. 289, 290.*

All lands and
houses to be
equally rated.

45. If a parish plead a custom for it to be laid only for lands and not for houses; or to be laid only for arable lands, and to be excused for their pastures; or to be laid only for their sheep-walks, and not for the rest; the custom cannot be good; for by the law, all lands and houses are to be equally rated, and their paying for some part can be no good cause for the discharging of the rest. *Hetley 130. Latch 203.*

What church is
to be repaired.

46. No church new built is esteemed as such in law till consecration; which being done, the parishioners are then to repair it. *1 Cro. 367.* If a question should arise whether 'tis a church

church, or chapel belonging to the mother-church, and any proof can be made that sacraments have been administered, and the dead buried, then 'tis by the law accounted a distinct church.

47. The churchwardens are also to see that the church-ways Churchwardens must see that church-ways be kept in repair, &c. well kept and repaired; and that no one do any thing to obstruct or annoy the same; that so the parishioners may at all times, without impediment or inconvenience, resort to the church as often as any part of the divine service shall be there performed. The said ways must be broad enough not only for the passage of single persons, but also for the carrying of a corpse through the same to be buried, as often as there shall be occasion for it. And the stiles are to be so made, that persons of all ages may be well able to go over them. If these ways be in the repair of the parish, the churchwardens must take care that they be well repaired at the parish charge; but if they are to be repaired by any other, either by custom or otherwise, they are by due course of law to compel all such to do what they ought to do in this particular; that all may have a free and convenient passage to the church, where God is to be worshipped by them, and none be obstructed or incommoded therein. Ways which lead to churches are only private, because they belong to the inhabitants of particular villages; and therefore if the churchwardens libel for a way for all the parishioners, and the defendant suggests that 'tis a common highway, a prohibition will be granted.

48. Any parishioner may prescribe to have a way to the church, but in the prescription he must set forth what way, viz. whether a horse or foot-way, and from whence, and through what place it leads to the church; and this will be a good justification in an action of trespass. 2 Roll. Abr. 287. If the churchwardens sue in the ecclesiastical court for a church-way, which they claim to belong to all parishioners by prescription, a prohibition lies, for this is not of ecclesiastical cognizance. 2 Roll. Abr. 289. P. 16 Jac. 1. B. R. between the inhabitants of *Wythorn* and *Bow*. The right of the church-way may be claimed and maintained by a libel in the spiritual court. A church-way may commonly be claimed as a private way. 2 Roll. Abr. 287. Prescription for a church-way may be pleaded by any inhabitant in the spiritual court. 2 Roll. Abr. 41.

C H A P. XXVII.

Of the Union or Consolidation of Churches.

Of the union or consolidation of churches, &c. by stat. 37 H. 8. c. 21.

1. **W**HEN two churches are united or consolidated, the rates and repairs are still to be separate as before. *Hob. 67.* and therefore, though one of the parish churches be demolished, and the parishioners constantly make use of the other, and have seats in it, yet they cannot be charged to any of its repairs or other expences. Which is to be understood only of country parishes, consolidated by virtue of the statute of 37 Hen. 8. c. 21. for, as to such parishes in cities, and towns corporate, which have been, or shall be consolidated by virtue of the statute of the 17th of Charles 2. c. 3. Remedy hath been provided by the statute of 4 & 5 W. & M. c. 12. whereby it is enacted, that in all such consolidations, if one of the churches is or shall be demolished, the parishioners of the demolished church shall pay the repair of the other according to the proportion which the bishop of the diocese shall direct, and till such directions be given, shall bear one third part of the charges. And it would have been well if the same had extended to all other consolidations also. For want of it, many parishes who have their own churches demolished, enjoy the whole right and benefit of churches in other places, and pay no church rates at all.

Of consolidations of churches at common law.

2. But though consolidations by this statute cannot extend hereto, yet consolidations by common law may. For, before the said statute of 37 Hen. 8. c. 21. there was a power by the common law in the bishop, with the concurrence of the patrons and incumbents, to consolidate any two contiguous churches; and the said statute, as well as that of 17 Car. 2. c. 3. being both in the affirmative, and not in the negative, do not it seem destroy the common law in this point; so that such consolidations, as might lawfully have been made before the said statutes, may be still made at this day. 'Tis true no consolidations at common law were good without the previous consent of the king, or his subsequent confirmation: But these statutes do limit what consolidations may be now made without the king, that is, by the bishop, with the consent of the patrons and incumbents of the parishes consolidated. And therefore consolidations so made, without the king, by virtue of the said statute, can extend no further than is by the said statute enacted. Consolidations at the common law seem still to be left as they were before the said statutes were made.

3. And by the common law, the bishop with consent of the And for what
 patrons and incumbents might consolidate any two contiguous reasons.
 parishes, upon the following reasons. 1. The vicinity of
 churches. 2. The paucity of the inhabitants of one or both of
 the parishes. 3. The inability of one of the parishes to keep
 their church by reason of their poverty. 4. The meanness
 of one or both of their livings, as not being able to maintain a
 minister so as to enable him to keep hospitality. 5. If the said
 parishes had at first been illegally severed. And the manner of
 effecting it was, 1. A commission of enquiry issued to examine
 into the truth of the said reasons. 2. All persons concerned,
 were to be legally cited to alledge what they had to say about
 3. On hearing all parties, a decree was made for the lega-
 cy of the consolidation. 4. The true value of both the livings
 consolidated was to be put into the instrument of consolidation;
 and many other niceties and formalities were to be observed, a
 failure of any one of which made a nullity in the whole. And
 therefore to salve this, the authority of the pope was called in,
 and his confirmation made good all defects. And what power
 the pope had used, was, on the abrogation of the papal autho-
 rity in this realm, transferred to the king by statute; and there-
 fore from that time, the king's confirmation was necessary; and
 previous licence is held to operate the same thing as a subse-
 quent confirmation. And therefore since the common law still Bishop may
 remains the same as to this particular, notwithstanding the sta- unite churches
 tutes aforesaid; it seems the bishop even now can by a common in whatever is of
 law consolidation, where there is the same reason for it, unite ecclesiastical ju-
 risdiction.
 parishes so as to make them one, not only in the benefice, but
 also in the church, and in whatever else is of an ecclesiastical na-
 ture, and depends on the ecclesiastical jurisdiction. But as to
 the other things which are out of an ecclesiastical nature, the bi-
 shop having no jurisdiction or power over them, his consolida-
 tions cannot reach unto them; and therefore as to the constables,
 overseers of the poor, surveyors of the highways, and all other
 matters which belong to the civil jurisdiction, the parishes, not-
 withstanding the bishop's consolidation, must still remain distinct
 as they were before; unless they have been united also as to
 these by the civil jurisdiction, as well as they have been by the
 ecclesiastical as to the other. Concerning common law consoli-
 dations, see *Austin and Twine's case*, *Cro. El.* 500, 501. *Moor*
8, & 601. 2 *Roll. Abr.* 178. At common law, the patron,
 person and ordinary might make union of two weak churches,
 without the consent of the king, 5 *Ed.* 3. 26. if they were very
 poor, because the king's concern was very small: But if they were
 of reasonable value, then the king's consent must concur. In 11
 7. the common law would not examine by whom an union
 was made; it was the making of the statute 37 *H.* 8. c. 21.
 which gave jurisdiction to the common law to examine whether
 unions

unions were well made: Such an union is commonly made in the time of the vacancy of the church, for if the church was full, the act of the ordinary could not prejudice the incumbent, for by the union the incumbency would be destroyed; therefore if the church was full, the consent of the incumbent was necessary; but if the church was full, and the incumbent would not consent, the union could not be made *de verbis in presenti*, but it might be made *de verbis in futuro, quando vacaverit*, &c. 6 H. 7. 14. And after the union the ordinary might compel the parishioners to come to the church to which the union was made, and to pay their tithes, by process in his court, and no prohibition was grantable. Their *modus*'s continued good; the parishes as to taxes, &c. continued distinct. *Hob. 67.* The reparations were several, but the union made it one church, and one benefice; the patrons of united churches have their rights and their possessions several. By *Powell* justice in the case of *Reynaldson v. Blake* and the *Bishop of London*, 1 Ld. Raym. 195, 196, 197. In a *quare impedit* for an united church, after the patron has had a presentation, he may declare, that he was seised of every second turn, as in gross. S. C. 1 Ld. Raym. 200. by *Treby C. J.*

But not good in corporations without consent of mayor, &c.

4. But whether the consolidation be made either by the common law or statute law, if it be in any city or town corporate, it cannot be good since the said statute of 37th of *Hen. 8. c. 21.* without the consent of the corporation; because that statute says expressly, that all unions and consolidations within any city or town corporate, without the consent of the mayor, sheriffs and commonalty of the said city, or without the consent of the bodies corporate of the said town, in writing under the common seal, shall be clearly void and of no force or effect; any thing before expressed, or any ordinance, law, custom or statute to the contrary thereof in any wise notwithstanding. Which clause being in such general words, comprehending all manner of consolidations whatsoever, and with a non-obstante to any other law, custom or statute, must extend to all common law consolidations, as well as statute law consolidations in all such cities and towns corporate.

Proviso in statute of 37 H. 8. c. 21.

5. In the said statute of 37 *Hen. 8. c. 21.* there is a proviso that where the inhabitants of any such parish, or the major part of them, within one year after such union, by their writing sufficient in law, shall assure the incumbent there, and his successors, so much money yearly, which, together with the value thereof in the king's books, shall amount to eight pounds; that then such union shall be void, but not to extend to any union made before that statute.

One of the churches must not be above 6l. per ann. in the king's books.

6. The statute of 37 *Hen. 8. c. 21.* requires that one of the churches to be united, be not of above six pounds yearly value in the king's books, and that they be not above one mile distant the

one from the other; and that the first fruits and tenths be
by both according to their respective valuations. Procura-
and pensions to continue as before.

7. In union or consolidation of churches in cities or towns
porate, and their liberties, made by virtue of the statute of
Car. 2. c. 3. the bishop may appoint in which church the
shioners shall meet, and which shall be united to the other;
the parishioner shall pay all tithes and other duties to the in-
bent of the church to which the other is united. Notwith-
ding such union, the parishes are to continue distinct as to all
s, taxes, parochial rights, charges, and duties; and all re-
ts whatsoever, other than above-mentioned; and church-
dens shall be appointed for each as before. But upon unions
ondon by the act for rebuilding the city, both parishes shall
tribute to the repair of the church which is to serve for the
ed parishes. *Skin. 588, 616. The parish of St. Savithin*
St. Mary Bothaw in London.

Consolidation
made by the
statute 17 Car.
2. c. 3.

Where one or more of the said churches are full at the
of such union, it shall take effect at the next avoidance af-
The patrons shall present by turns to that which remains,
ch order as the bishop, with the consent of the officers there,
he major part of them, and of the patrons, &c. shall decree,
ect being had to the differences of the maintenance.

May be made
when the
churches are
both full.

No such union shall be good in law till it be registered in
register-book of the bishop of the diocese, nor where the
tenance of the church or churches so united shall exceed
l. per ann. clear, unless the parishioners or the major part of
under their hands desire otherwise. And the incumbents
churches so united must be graduates in one of the universities.

Must be register-
ed in the bishop's
register.

Owners of impropriations, tithes, &c. may annex the
to the parsonage or vicarage, where they lie, or settle
in trust for the curates where the parsonage is impropriate,
no vicarage endowed, without any licence of *mortmain*.

Impropriators
may annex their
tithes without
mortmain.

If the settled maintenance of any parsonages or vicarages,
ches or chapels so united, or of any other parsonage or vi-
e with cure, shall not amount to 100 l. per ann. clear, the
bent may purchase to him and his successors, land, &c.
out licence of *mortmain*. 1 Cro. 500, 501. *Plowden 499. b.*

Must not exceed
100 l. per ann.

The union makes no alteration in the advowsons, as if
e appendant and the other in gross; and that which is ap-
ant is made the presentative church, and the patron of the
h in gross hath the first turn, yet shall not the whole ad-
on be in gross, but it shall remain appendant for his turn
was patron of the advowson appendant, and in gross for his
who was patron of the advowson in gross. *Dyer 959. b.* And
nd benefice may be taken by dispensation, within the sta-
of pluralities, where an incumbent hath already two churches
d. 1 Cro. 720.

The union does
not alter the
nature of the
advowsons.

13. Division of churches is not to be allowed but by act of parliament.

Where a prohibition lies.

14. Where two churches were united by virtue of the statute of 37 Hen. 8. c. 21. upon the suggestion that they were not distant above one mile, and the parishioners are sued in the spiritual court for not coming to church, they may have a prohibition upon a surmise that the churches were more than a mile apart. 2 Roll. Abr. 293.

C H A P. XXVIII.

Of Sequestration.

Antiently profits of vacant benefices belonged to the bishops, &c.

ANTIENTLY the archbishops and bishops were intitled to the profits of vacant benefices by custom. And the king might take the profits of the deanery of a free chapel, and the patron of a donative the profits of it during the time of vacation. 2 Cro. 518. But by statute 28 Hen. 8. c. 11. they belong to such persons as shall be next thereunto presented, promoted, instituted, inducted, or admitted, towards payment of the first fruits to the king. Institution only gives a right to enter upon, and take the profits as well of the vacation as otherwise; but the incumbent cannot sue for them before induction. And if those who shall receive the profits of the vacation, refuse to restore them to the next incumbent, they shall forfeit the true value; one half to the king, the other to the incumbent. *Ibid.*

How the profits of a vacant benefice are managed.

2. The ordinary way of managing the profits of a vacant benefice is by sequestration granted to the churchwardens, or to neighbouring clergymen (which seems much more proper and convenient) who are to account to the successor for the profits retaining so much as will pay the cure, during the vacation and the charge of collecting. By the aforesaid statute a reasonable stipend or salary is to be made out of the profits for serving the cure, of which the ordinary is the most proper and competent judge; and if the successor finds himself aggrieved, he may be redressed by appeal to the superior ecclesiastical courts; but the reasonableness or unreasonableness is also triable by action at law grounded upon this statute. And if the profits of the vacation will not answer the cure, the incumbent is to pay it within fourteen days after possession. *Ibid.* See chap. XXIX. sect.

Part to be given to one to serve the cure.

C H A P. XXIX.

Of Dilapidations.

THE ordinary hath a right to take cognizance of dilapidations during the life of the incumbent, either by voluntary inquisition, or upon complaint made to him, and to force reparation, by the sequestring of profits, or by ecclesiastical censures even to deprivation. *3 Bulst. 158. 2 Inst. 204.*

2. Under dilapidations are comprehended not only decayed ruinous buildings, but hedges, fences, mounds, &c. in the same condition. And the felling of wood and timber, otherwise than for repairs, or for fuel, hath been adjudged to be dilapidations from which the incumbent may be restrained during his incumbency, or he or his executors sued after he ceases to be incumbent. *2 Bulst. 279. 3 Bulst. 158. 1 Roll. Rep. 335.*

3. There is no certain rule as to the proportion of the profits to be sequestered, but it is left to the direction of the ordinary, according as particular occasions require. The general practice is one fifth part. *What share of the profits are usually sequestered.*

4. By statute 13 *Eliz. c. 10.* where there is a fraudulent deed to defeat the successor of dilapidations, the successor shall have the same remedy against him to whom any such fraudulent deed is made, as if he were executor or administrator, and the statute in that case seems to limit the suit to the dilapidations that have grown in the time of the last incumbent. But in other cases the incumbent or his executors are chargeable with the whole dilapidations, in what time soever they may have grown.

5. Though the ecclesiastical courts take cognizance of dilapidations, yet an action upon the case for the same lies in the temporal courts. *1 Lev. 268. 3 Lev. 413.* *Action lies at law for dilapidations.*

6. By statute 14 *El. c. 11.* all sums recovered for dilapidations, by sentence, composition, or otherwise, shall be so employed within two years after the receipt thereof, on pain of forfeiting to the king double as much as shall be so received, and not employed; and if the incumbent dies within that time, the money shall be paid by his executors to the successor, and be laid out by him (not by the executors) in repairs. *In what time monies recovered for dilapidations are to be laid out.*

7. Upon any vacancy of the benefice, the churchwardens are to apply to the chancellor of the diocese for a sequestration; and having taken out an instrument for it under the seal of the office, they are to manage all the profits and expences of the benefice for the benefit of the succeeding parson, plow and sow the glebe, gather in tithes, thresh out and sell corn, repair houses, make up his fences, pay his tenths, synodals and procurations; *The method of taking out a sequestration.*

Ordinary to settle curate's proportion.

Ordinary may supersede the sequestration, and grant it to others.

If churchwardens neglect or refuse the sequestration, ordinary may force them to it.

They must account to the new incumbent.

Sometimes sequestrations are granted when the living is full.

Sequestrators must take care not to commit waste.

and principally they are to take care, that during the vacancy the church be well and duly served by such a curate as the bishop shall approve of, whom they are to pay out of the profits of the benefice. *2 Co. Inst.* 89. And it will be safest for them to get it stated by the ordinary, when they take out the sequestration, what they are to pay him weekly for the serving of the said cure, for then there can be no contention about it when they make up their accounts. And this trust in them continues till it be superseded by the institution of a new incumbent, unless in the interim the ordinary shall see just cause to recall the sequestration, and grant it to others. And as the ordinary has any such just cause hath power to grant the sequestration, so hath he in the first issuing of it out; and may then, if he see reason for it, put the said trust into the hands of other men who are willing to accept of it. But the churchwardens are the proper officers for this business, who are bound by virtue of their office to take it upon them whensoever enjoined. And therefore should they be backward to take out the sequestration, or unwilling to meddle therewith, the ordinary may cite them before him, and command them under the penalty of contempt to take this charge upon them, that so the fruits of the benefice be not lost, dissipated or imbezzled, during the vacancy, for want of proper trustees to take care of them.

8. As soon as a new incumbent is instituted, the sequestrators are to account to him for all the profits of the benefice, which they have received during the vacancy; and if he be satisfied with their account, and give them a discharge, this wholly concludes the matter. But if he be dissatisfied in any particular, then he may bring them to account before the ordinary, to whom all things relating hereto are to be examined and decided.

9. And sometimes livings are sequestered on other occasions than vacancies, for on a suspension there must be a sequestration for the serving of the cure. And in case of dilapidations either in the chancel or the minister's house, a sequestration is often necessary for repairing of them. And sometimes a sequestration is commanded by the king's writ for the payment of the minister's debts; in which sequestrations there must be the like management, and the like account given as abovesaid. And to oblige the sequestrators the more hereto, the ordinary usually binds them to it by a bond; especially when the profits sequestered amount to a considerable value. Which bond may be sued at common law, if the sequestrators cannot otherwise be brought to give a true and faithful account.

10. In all sequestrations, the sequestrators are to take care that they meddle not with any timber, trees, wood or underwood, standing upon the glebe, unless it be for necessary repairs, nor commit any other waste upon the benefice, *9 Hen. 6. c. 5.* If the minister himself should sell any timber to sell, or for any other purpose.

purpose, unless for the repair of his house or chancel, or should cut down any wood, unless for the repairing of the gates, stiles, or fences of the premises, or for necessary fuel in his houses, he does thereby commit waste upon his living, and when that is wilfully committed 'tis a dilapidation, and a just cause of deprivation. 11 Co. 41. 3 Inst. 204. 1 Roll. Rep. 86. And should the sequestrators (who are trustees to preserve the living) commit any waste, it would be much more criminal in them.

11. In case of a spoliation brought to try which of them is rightful parson, 'tis usual for the judge, at the petition of either of them (setting forth that opposition may be made in collecting the profits) do decree that they shall be sequestred, and to order the churchwardens to collect them; and this must be published in the church; and they are to give bond not only to collect them, but to keep the same for the use of him who shall be found to have the right, and to account to him. And the judge usually appoints some minister to supply the cure in the meantime, and appoints the sequestrators to allow a certain reward to that minister. And after the suit is determined, the sequestrators are to deliver the profits which they have collected to him who hath the right: And this they must do either in specie, or the value sold. If they refuse, they may be compelled by the ecclesiastical court; and if they delay to come to account, the judge may assign the bond to the party aggrieved with a letter of attorney to sue for the penalty.

In case of a spoliation, a sequestration issues.

12. It hath been a question, Whether the tithes of an improPRIATOR may be sequestred to repair the chancel. 'Tis certain they might while they were in the hands of the monks; but being now made a lay fee by act of parliament, the spiritual court hath no jurisdiction over them; but the usual course, in such cases is by citation; and in cases of contumacy to proceed to excommunication,

How to proceed against improPRIATORS for not repairing the chancel.

13. Sometimes a benefice is sequestred by virtue of some process out of the courts at Westminster. And this is where a judgment is obtained against a clergyman, and upon a *fi. fa.* directed to the sheriff, to levy the debt and damages, he returns that the defendant is *clericus beneficiatus non habens laicum forum in balliva mea*; then another *fi. fa.* is directed to the bishop, who thereupon issues forth a sequestration under his episcopal seal, directed to the churchwardens to levy the same *de his ecclesiasticis*, and by virtue thereof the tithes shall be sequestred. But if the parson had made a lease of his tithes before the *fi. fa.* came to the hands of the bishop, then he may return that *nulla habet bona ecclesiastica*. And this was the case of *Piercy* against the bishop of Ely, who made such a return, and it was allowed; though in truth the defendant had a spiritual living in that diocese, but had let it before the writ came to the bishop. 1 Sid. 276. 1 Keb. 947. 2 Keb. 83. 1 D. A. 182.

Method of sequestration on a judgment.

But not where the parson hath made a lease of his tithes.

Profits in abeyance during the vacancy.

14. The profits of the church, during the vacancy, are in abeyance, and therefore to be received by the churchwardens by the appointment of the bishop under the seal of the court. And this is to provide for the cure during the vacancy. But they cannot bring an action in their own name for the tithes. Therefore the proper remedy to recover them is by libel in the spiritual court.

C H A P. XXX.

Of the Duty of Churchwardens by several Statutes.

1. **W**E have hitherto treated of churchwardens chiefly in their ecclesiastical capacity; we shall now consider them as lay-officers, having their authority by several acts of parliament. For coming to church, see stat. 1 *El. c. 2.* 23 *El. c. 6.* 29 *El. c. 6.* 35 *El. c. 1.* 3 *Jac. 1. c. 4.* 13 *Car. 2. c. 4.* And first by the stat. 1 *El. c. 2.* every person to come to his parish church, or (upon lett thereof) some other church, every Sunday or holyday, on pain of the censures of the church, and likewise to forfeit twelve pence to be levied by the churchwardens, for the use of the poor, by way of distress. And any justice of peace of the division where the offender lieth may send for him, the neglect being proved by one witness upon oath; and if he cannot give a satisfactory excuse, the justice may direct a warrant to the churchwardens to levy the penalty by distress; and if that cannot be had, then to commit him. 3 *Jac. 1. c. 4.*

Every body is bound to come to his parish church.

Protestant dissenters duly qualified are exempted.

But not otherwise.

2. These acts for coming to church extend not now to protestant dissenters. But this is to be understood upon supposition that such dissenters have qualified themselves according to the act of toleration of 1 *W & M. c. 18.* for if any shall, without qualifying themselves in that manner, resort to any assembly or meeting for divine worship, dissenting from the church of England, they can have no benefit of the said act of toleration, but are liable to all the pains and penalties of law, not only for being absent from church, but also for being present at the said dissenting meetings, in the same manner as if the said act had never been made; and are by the churchwardens to be presented for the same. So also if the said assembly or meeting shall be held in a house not legally registered and allowed for it, or if they shall there meet with the doors locked, barred or bolted upon them, all that are present, are excluded by the said act from having a benefit of it, and are liable to be prosecuted, and mul-

presented by the churchwardens in order to it, in the same manner as if the said act of toleration had never been made.

5. And it is here to be observed, that if any dissenting minister not being in orders according to the church of *England*, shall administer the sacrament of the Lord's supper in an unlawful house, or without qualifying himself as the said act of toleration requires, he is not within the benefit of the said act, and consequently is liable to the penalty of 100 *l.* forfeiture for every time he shall so administer the said sacrament, by 13 *Car. 2. c. 4.*

In what case a dissenting teacher forfeits 100 *l.* &c.

4. The churchwardens are also to see, that all who resort to the church do, in time of divine service and sermon, behave themselves orderly, soberly and reverently; kneeling at the prayers, standing at the belief, bowing at the name of JESUS, and sitting or standing quietly and attentively at the reading of the scriptures, and the preaching of GOD's word, &c. And that none walk, talk, or make any noise in the church, to disturb the duty which is there performing. *Can. 18 & 111.* And that none sit there with their hats on, or in any other indecent or irreverent manner. 1 *El. c. 2.* And that none contend or quarrel about place, or upon any other occasion make any broil or brawling there. 5 & 6 *Ed. 6. c. 4.* And that no person abide in the church porch or church-yard, during divine service or sermon, and that no excommunicated person come into the church, *Can. 85.* or any other disturbance or indecent behaviour be there permitted, and none depart out of the church unless in case of necessity, till the service be fully ended. *Can. 8.* And if any boys shall there behave themselves rudely and disorderly, or shall make any noise or disturbance, the churchwardens may chastise them for it; and if any person shall irreverently keep his hat on, they may take off the same, *Hal v. Lanner, 2 Keble 124. 1 Saund. 13. 1 Sid. 301;* and for this or any other irreverent or disorderly behaviour they may present them at the next visitation, and also bring them before a justice of peace, and make them pay one shilling for every time they shall so offend; for there are three offences mentioned in the statute 1 *El. c. 2.* for which one shilling is to be paid. 1st, For dissenting from church. 2d, For not abiding there till divine service and sermon are ended. 3d, For not behaving orderly and soberly while there; and notwithstanding they have paid the same mulct, they must also be presented for the same at the next visitation.

Churchwardens to see that every one behaves orderly at church, &c.

5. The churchwardens are also to see that the Lord's day be duly observed, for if any one shall do any worldly work or business on that day (works of charity and necessity only excepted) he forfeits five shillings. If any shall then publicly cry or expose to sale any wares, they shall forfeit the said wares. If any carrier, carter, wainman, carman, drover, horse courser, wagoner,

And to see that the Lord's day be duly observed, &c.

goner, butcher, higler, or their servants, shall travel on the Lord's day, every one of them for so offending shall forfeit twenty shillings. If any person shall on the Lord's day employ, or travel with any boat, wherry, barge or lighter, unless upon extraordinary occasions to be allowed by a justice of the peace, he shall forfeit five shillings; except such wherries are allowed to ply every Lord's day between *Limehouse* and *Vaux-hall* on the *Thames*, by 11 & 12 W. 3. c. 21. and such hackney-coaches and chairs as are allowed by statute 9 Ann. c. 23. and 1 G. 1. c. 1. If any butcher shall on the Lord's day kill or sell any victuals, he forfeits six shillings and eight pence. And if any then meet at bullbaitings, bearbaitings, interludes, common plays, or any other sports or pastimes whatsoever, every one so offending shall forfeit three shillings and four pence. All which forfeitures the said churchwardens are by a warrant from a justice of the peace or chief magistrate of the place, to levy on the offenders by distress and sale of their goods, and apply them to the relief of the poor of the parish where the said offences shall be committed; and where no distress is to be had to put the offenders in the stocks. 1 Car. 1. c. 1. 3 Car. 1. c. 1. 29 Car. 2. c. 7.

Churchwardens
ought to visit
publick houses
on Sundays.

6. Churchwardens ought also frequently on the Lord's day to visit alehouses, taverns, and other publick houses, both in time of divine service, and also out of it; and if they find any tippling in the said houses, they are to make them pay three shillings and four pence for the same, and the master of the house ten shillings for entertaining them, and also five shillings more for using his trade on the Lord's day; and if it be in time of divine service, they may make every one of them pay also one shilling for being absent from church; all which forfeitures are to be levied and disposed of in the same manner as the last above mentioned. 1 Jac. 1. c. 9. 4 Jac. 1. c. 5. 1 Car. 1. c. 14. And they are also to be presented by the churchwardens at the next visitation.

7. They may also present the minister, if he be not according to law constantly resident in the parish for doing his duty, or in any other respect he leads a disorderly and irregular life. 21 H. 8. c. 13. Can. 41, 45, 47.

Penalties of dis-
turbance of a mini-
ster in divine
service.

8. If any one shall either by word or deed unlawfully interrupt, disturb or abuse any minister in any church or chapel while he is there performing his duty, by the 2 & 3 Ed. 6. c. 8. he is to forfeit for the first offence 10 l. or if that be not paid within six weeks after conviction, he is to suffer three months imprisonment; and for the second offence he is to forfeit 20 l. or if that be not paid within six weeks after conviction, to suffer six months imprisonment; and for the third offence he is to forfeit all his goods and chattels, and be imprisoned during life. By 1 M. c. 3. he is to be committed to gaol for three months, and from

from thence till the next quarter-sessions, when he is to be released or to be continued in prison as the court shall see cause. By 1 *El.* c. 1. he is to forfeit for the first offence 100 marks; and if it be not paid within six weeks after conviction, to suffer six months imprisonment; and for the second offence to forfeit 400 marks, and if that be not paid within six weeks after conviction, to suffer imprisonment for one whole year; and for the third offence to forfeit all his goods and chattels, and be imprisoned during life. And by 1 *W. & M.* c. 18. every such offender is to be bound with two sureties before a justice of peace, and in default be committed to prison till the next quarter-sessions; and upon conviction at the sessions shall forfeit 20 *l.* *toties quoties*. And whenever such an offence is committed, it is the churchwardens duty to see the law executed upon the offenders, and they have their choice which of these statutes they will prosecute them upon.

9. By a statute 23 *El.* c. 6. every one who absents from church for a month, forfeits 20 *l.* and if he be absenting for twelve months or more, 20 *l.* for every month, and forfeiture of two parts in three of his or her estate, and shall after certificate thereof in writing to the court of *B. R.* by a justice or the ordinary, be bound with two sureties in 200 *l.* for good behaviour, and so continue till he conform, &c. Penalty of absenting from church for a month, &c.

10. If any one come not to the sacrament of the Lord's supper once a year, his or her name and surname must be presented; forty shillings reward to such as present them.

11. None shall speak or do any thing in contempt of the most holy sacrament, on penalty upon his conviction by the oaths of two lawful witnesses, to be bound over by three justices (*quorum unus*), &c. and prosecuted for the same. 1 *Ed.* 6. c. 1.

12. Shoemakers putting boots or shoes to sale on a Sunday, forfeit three shillings and four pence, and the goods. 1 *Jac.* 1. c. 22. Sale on a Sunday is not good. 12 *Ed.* 4. c. 1. The statute 29 *Car.* 2. c. 7. does not extend to dressing meat in inns, cooks shops, or victualling houses; and every person to be impeached on that statute must be presented within ten days after the offence. Shoemakers selling shoes on Sunday forfeit them, and 2 s. and 4 d. What the stat. 29 *Car.* 2. does not extend to.

13. Constable for arresting (for good behaviour) on a Sunday in the church-yard coming from church, fined. 1 *Cro.* 602. *Prinson's case.* *Godb. Pl.* 397. Where one is assaulted and beaten in a church, it is not lawful to return or give back any blows in his own defence, as he may do in another place. That due reverence and attention may be had in the publick-worship, all quarrelling is prohibited either in the church or church-yard; and if any one offend in such case, the ordinary, upon proof of the fact by two witnesses, may suspend him *ab ingressu ecclesiæ*, and if a clerk *a ministerio officii*. The proceedings for quarrelling or brawling may be in the spiritual court *pro salute animæ*, but

The laws against quarrelling in church or church-yard.

Cases of it.

None to be arrested going to or coming from church, &c.

Churchwardens to provide engines, &c. in case of fire.

Rewards to those who bring in engines to fires, &c.

but for any damages; but the party may have costs there *expensis litis*. 2 Cro. 462. 4 Rep. 20. Striking or laying hands on another there, the offender shall be *ipso facto* excommunicated. 5 & 6 Ed. 6. c. 4. But if it is with a weapon or if it is only drawn for that purpose, the offender is to lose one of his ears. Now tho' the words *ipso facto* take off the formality of a sentence of excommunication, yet before he is excommunicated he must be convicted at law, and that must be transmitted to the ordinary. 1 Vent. 146. If a man should be indicted on this statute, it must not be generally, but the fact is to be brought within the letter of the law, and therefore the indictment must set forth with what weapon the person did strike; for it is not sufficient to alledge that *extraxit gladium* against another, and *ipsum percussit*, but it must be according as the statute is penned, *viz. Extraxit gladium ad percutiendum*, and that *malitiose percussit*; for to set forth generally, that he did strike, is not good. Cro. Car. 464. Cro. El. 231. 3 Leon. 188. Ny. 171. To strike without a weapon is excommunication *ipso facto*, as hath been observed; to strike with a weapon is the loss of one ear; therefore where a commitment was made by justices of peace for disturbing a minister *per apertum factum*, the prisoner was discharged, because they ought to set forth the particular fact, as by pulling him by the gown, using any chiding, quarrelling, or opprobrious words. But for any indecent or irreverent behaviour, the party may be indicted at the sessions.

14. And in order to protect those who come to church, we have laws to secure their persons *eundo morando*, & *reduendo*, to or from divine service; the person offending may be excommunicated, and pay costs in the spiritual court, or may be indicted and fined in the temporal courts, and bound to the good behaviour. But the arrest is good in law, unless upon a Sunday. 50 Edw. 3. c. 5. 1 Ric. 2. c. 15. But these statutes relate only to arrests in civil acts, and do not extend to an arrest for a breach of the peace, which is at the suit of the king.

15. By stat. 6 Ann. c. 31. churchwardens of every parish within the weekly bills of mortality must, at the charge of the respective parishes, fix upon the pipes belonging to the water-works, stop-blocks, and fire-cocks, and make a mark on the front of any house over against them, to find them, where an instrument is to be kept to open the plug when any fire happens. And in each parish is to be kept a large engine, and an hand engine, and a leather-pipe, and a socket of the size as the plug or fire-cock, under the penalty of 8*l.* to be levied by warrant of two justices, by distress and sale of the goods of the churchwardens; one moiety to go to the informer, and the other to the poor. *Ibid.*

16. And by statute 7 Anne, c. 17. the first person who brings in a parish engine, or any other large engine with a socket, &c.

When any fire happens, shall be paid, as an encouragement, 30 s. the person who brings in the second parish engine 20 s. the third 10 s. and the turn-cock, whose water shall first come into the main pipe, is to have 10 s. paid by the churchwardens, or the same shall be levied by distress, &c. The rewards to the turn-cock and others shall not be paid without the approbation and direction of the alderman of the ward where the fire happened, or of his deputy, or two common-council men of the same ward. But the several rewards shall be likewise paid to the keeper of any other great engine, who shall bring it in to help to extinguish the fire, in good order and compleat, though it is not a parish engine. *Ibid.*

Put not to be paid without the direction of the alderman of the ward, &c.

17. If the vestries shall think it necessary to have more than one great engine, or hand engine, they may provide it at the parish charge, or by an assessment to be made as by the former act, and to be under the same regulation. *Ibid.* The vestries may rate and assess such sums of money as are necessary to defray the charge of providing and maintaining the engines, stop-locks, and fire-cocks, and other implements and materials, and for payment of the said rewards, which rates being confirmed as the poors rates, may be levied in like manner. *Ibid.*

Vestries may assess and raise the sums requisite, &c.

18. By statute 4 & 5 Ann. c. 14. all printed copies of the king's letters patent, or briefs granted under the great seal of Great Britain, for the collection of charity money, being first stamped according to the direction of the said act of parliament with a proper stamp made for that purpose, and indorsed with the name of one or more of the commissioners or trustees, are to be given out to such undertakers as shall be appointed by the persons concerned, or the major part of them, to raise and collect the same, and are with all convenient speed to be sent or delivered by them to the respective churchwardens and chapelwardens of the respective churches or chapels, and to the respective teachers and preachers of every separate congregation, or to any person who hath taught or preached in any meeting of the people called quakers, in the counties and places to be comprised in the said letters patent.

The churchwardens duty about briefs for charity money, &c.

19. The said churchwardens, chapelwardens, preachers and teachers, and quakers having taught as aforesaid, immediately after such receipt, shall indorse the time of his or their receiving the same, and set his or their names thereto; and the said churchwardens and chapelwardens shall deliver over the same printed brief by them received to the several ministers and curates of the said churches and chapels who shall receive the same. And the said respective ministers and curates shall, on receipt thereof, indorse the time they respectively received the same, and set their respective names thereto.

The time of receiving to be indorsed by churchwardens, &c.

And by minister, &c.

20. And the said respective ministers and curates, teachers, preachers, and people called quakers, qualified as aforesaid, shall, on some Sunday within two months after the receipt of such

Must be read in two months, &c.

such printed copies, immediately before the sermon, preaching or teaching shall begin, openly read or cause to be read, such printed briefs in their respective churches, chapels, and places of meeting, to the congregation there assembled.

Sums to be collected,

21. And the respective churchwardens, chapelwardens and teachers of every such separate congregation, and such persons called quakers, to whom the brief shall have been so delivered as aforesaid, shall collect the sum of money that shall be freely thereon given, either in the said respective assemblies, or by going from house to house of the members of their respective congregations, as the briefs shall require in that behalf.

and indorsed.

22. And on every such collection made as aforesaid, the sum which shall be collected, with the place where, and the time when the same was collected, shall be indorsed, fairly written in words at length, on such respective printed briefs (by filling up the printed form, which is to be indorsed on them according to the purport of the said act) and signed by the minister or curate, and the churchwardens in the churches and chapels, and by the teacher and two elders, or two other substantial persons of every separate congregation.

Briefs to be returned.

23. The said respective churchwardens and chapelwardens, and the respective teachers or preachers, or other persons required to make the collection as aforesaid, after having made the same, shall on request of such person or persons, as shall undertake to place and disperse the said briefs, as aforesaid, or of any person by them or any of them lawfully authorized, deliver to such person or persons making such request, the respective printed briefs so indorsed as aforesaid, and the monies thereon collected, taking a receipt for the same.

Penalties.

24. Every the said ministers, curates, teachers, preachers, churchwardens, chapelwardens and quakers qualified and required as aforesaid, who shall refuse or neglect to do any of the matters or things before respectively required of them, shall forfeit the sum of twenty pounds, to the benefit of the sufferers in whose behalfs such briefs shall be granted, to be recovered by them by action of debt, bill, plaint, or information. And the undertakers not demanding the briefs and money in six months, are liable to the same penalty.

A register to be kept.

25. In every parish or chapelry, and separate congregation, a register shall be kept by the minister or teacher there, or by some teaching quaker, of all monies collected, by virtue of such briefs, therein also inserting the occasion of the brief, and the time when the same was collected, to which all persons at all times may resort without fee.

Briefs not to be farmed.

26. If any person or persons shall farm or purchase any charity money to be collected on briefs, such person or persons shall forfeit the sum of five hundred pounds to be paid to the sufferers, and such contract is declared void.

27. If the whole number of briefs be not returned, the undertaker for every copy wanting shall forfeit 50*l.* unless he can shew sufficient proof in chancery of the brief being lost by inevitable accident, and of the money collected thereupon. Penalty of not returning all the briefs.

28. The undertakers, in two months after the receipt of money, and notice to sufferers, are to account before a master in chancery, to be appointed by the lord chancellor.

29. Churchwardens in *London* sign certificates of persons receiving the sacraments to qualify them to bear offices, &c.

30. Churchwardens are also to receive the penalties for hawk-spirituous liquors, 9 *Geo.* 2. c. 23. On eating flesh on fish days, 5 *El.* c. 5. On servants for carelessly firing houses, 11 *Geo.* c. 31. and on tracing hares in the snow, (and other penalties on account of game) 1 *J.* c. 27. And they are not to bury felons of themselves or persons who die excommunicated in the church or church yard, without special licence from the bishop. *Degge* 183. and shall carry hawkers and pedlars, trading without licence before a justice of the peace. 10 *W.* c. 27. And on certificate from the minister, shall lay to the magistrates, for conviction of offenders in not burying in woollen 30 *C.* 2. c. 3.

31. Likewise they, (or the constables) are to levy the penalty for keeping an unlicensed alehouse. 3 *C.* c. 3. And they (and overseers of the poor) are to levy the penalty of 5*l.* for inhabitants not reading the common prayer once a month. 13 *C.* 2. c. 4. (See *C.* XIII. *sect* 1.) And also the penalty on selling corn by a wrong measure, 22 *C.* 2. c. 8. And on selling butter and cheese. 13 & 14 *C.* 2. c. 26. To regulate weights and measures. 16 *C.* c. 19. 22 *C.* 2. c. 8. And shall distribute amongst the poor, foreign cattle imported, forfeited and killed. 32 *C.* 2. c. 8. And pay to the high constables the parochial county rate, out of their money collected for the poor. 10 *Geo.* 2. c. 29.

32. And lastly churchwardens shall join with the constable or surveyor of the highways, in choosing and returning new surveyors. 3 *W.* c. 12. They are likewise to join with constables in making rates for relief of poor prisoners, maimed soldiers, &c. with overseers of the poor, in making assessments for relieving the poor of poor parishes, setting up trades for employing them, placing out poor apprentices, settling poor persons, and in the execution of their whole office, by stat. 43 *El.* 1 *Jac.* 1. c. 25. 13 & 14 *Car.* 2. c. 12. 3 & 4 *W.* & 11. 1 & 5 *W.* & *M.* c. 24. 8 & 9 *W.* 3. c. 30. 9 & 10 *W.* 3. c. 11. 5 *Anne*, c. 34. 12 *Anne*, c. 12. See below chap. XXXIII. *passim*.

33. Note; Where there are two or three churchwardens of a parish, each of them is a distinct churchwarden. 2 *Wms.* 107. If a pecuniary legacy given to a parish church, belongs not to the

the rector or vicar, but to the churchwardens, for the reparation of the church, and the improving and adorning the same. 2 *Wms.* 125. *Attorney General v. Rupert.* And as the parson is a corporation for taking land for the benefit of the church, so the churchwardens are a corporation to take personal estates. *Wms.* 126. S. C.

34. Parishioners are so far interested in all matters which relate to the parish, that if a charity be given to cloath poor persons of the parish, the parishioners cannot be witnesses, because they are interested, as being eased in their poor-rates. 1 *Wm.* 600. *Attorney General v. Wyburgh & al.* Where there is a dispute touching money given to the parishioners, none of the inhabitants of the parish ought to be witnesses. 2 *Vern.* 31. *Dodswell v. Nott.*

C H A P. XXXI.

Of Sidesmen or Synodsmen.

Bishops used to hold a synod once a year.

And to summon some of the laity.

Who afterwards became standing officers.

How sidesmen are chosen.

1. **I**T was usual in former times, as has been before said, for bishops to hold a diocesan synod once a year, and to select a number at the discretion of the ordinary to give information upon oath concerning the manners of the people within the district, which number was elected while the synod was sitting, and the people as well as clergy in attendance there. In process of time it was changed, and it was usual for bishops to summon some credible persons out of every parish, and it was directed in the citation, that four, six or eight, according to the proportion of the district, should appear together with the clergy to represent the people, whom they examined upon oath concerning the manners of the people, the condition of the church and other affairs relating to it. Afterwards these persons became standing officers in several places, especially in great cities, and when it became a custom for the parishioners to repair to the body of the church, which began about the fifteenth century, these officers were still more necessary, and then they were called *testes synodales*, or *juratores synodi*; some called them synodsmen, and now they are corruptly called sidesmen.

2. They are chosen every year in great parishes by the minister and parishioners if they can agree, otherwise to be appointed by the ordinary, or according to the custom of the place; and their business is to assist the churchwardens in making their quests and presentments of such offences and offenders to the diocesan.

ary in his visitation relating to the church, and of such matters as are punishable by the ecclesiastical law.

3. It is provided by canon, that no churchwardens, fideles, Churchwardens, &c. to be cited only at the usual times, &c. or questmen shall be cited or called, but only at the times appointed and appointed to appear in the ecclesiastical court or before any ecclesiastical judge, for refusing to present any faults or offences committed in their parishes at other times. and by the ecclesiastical law punishable, nor be further troubled after their presentments delivered at the usual time, unless it manifestly appear that they have wilfully neglected and omitted, for favour, or to present some one or more notorious crime or crimes; or on just cause to call them, in order to explain their former presentments, &c. But in case of any wilful omission of their duty, the ordinary may proceed against them for breach of oath in the ecclesiastical courts, as for wilful perjury. *Can. 117.*

A Warrant against Sabbath-Breakers.

to the constables, churchwardens, fidelesmen, and overseers of the poor of the parish of _____ within the county of *Middlesex.*

Mid. ff. **W** Hereas we have been informed, that the Lord's day is often profaned in your parish by disorderly meetings of several idle persons, and by gaming, sports, and tipling in publick houses and shops, and by persons using and exercising their several and respective trades and callings on that day; and likewise by several other means, particularly by persons who keep fruit and herb stalls, to the obstruction and hindrance of his majesty's subjects, contrary to the laws in that case made and provided: And whereas such disorderly and unlawful proceedings tend to the encouragement of vice, lewdness, immorality and profaneness, to the dishonour of God, disturbance of the inhabitants, and evil example to others: These are therefore in his majesty's name to require you and every of you, to make a strict and diligent search throughout your said parish on the next Lord's day, being the _____, for all such persons offending as aforesaid; and that you make a true account of the christian and surnames of all and every persons offending in the premisses, to the end the same may be returned by you upon oath unto us at a petty sessions to be held at the _____ try-room of _____ on _____ next, at _____ o'clock in the forenoon, in order to be dealt with according to law; whereof you and every of you are not to fail. Given under our _____, &c.

A Warrant against one for not coming to Church

To the churchwardens of the parish of C. in the county of
or either of them.

1 El. c. 2.

5. Essex, ff. **W** Hereas oath hath been made before me, the
J. O. of, &c. did not upon the Lord's day
past resort to any church, chapel, or other usual place appointed
common prayer, and there hear divine service according to
form of the statute in that case made and provided: These
therefore to require you, &c. to bring the said J. O. before me
of his majesty's justices of the peace, to answer the premi
Given, &c.

A Warrant to levy the Forfeiture for not coming
to Church.

To the constable of, &c. and the keeper of the gaol at, &c.

1 El. c. 2.

6. Essex, ff. **W** Hereas it hath been duly proved on oath be
me, that C. D. of or in the county aforesaid
hath not for these five Sundays last past frequented or been
church, or other place ordained for divine service, but hath in
ligiously absented himself from the same, contrary to an act of
liament in that case made; and the said C. D. (not having
peared, though duly summoned, or) having appeared before
has not made a sufficient excuse for his said default: These
therefore to require you to levy by distress and sale of the goods
the said C. D. the sum of 5 s. by him forfeited for the said offence
and that you do apply the same to and for the use of the poor of
said parish of, &c. rendring the overplus of the said distress to
said C. D. Hereof fail not. Given, &c.

A Warrant to levy five Shillings on those
use a Trade or any worldly Labour on the Lord's
Day.

To the constables and churchwardens of, &c.

One justice,
two witnesses,

29 Car. 2. c. 7.

7. Essex, ff. **W** Hereas it hath been duly proved before
oath, that A. B. and C. D. both of the
parish of, &c. barbers (or as the case is) and being of the age
fourteen years and upwards, did exercise the work of their
nary callings or trades, at, &c. on the 17th day of this instant
cember, being the Lord's day; by reason whereof each of

th forfeited the sum of 5s. for the use of the poor of the said parish: These are therefore, &c.

Warrant to levy the Penalty on Persons travelling on the Lord's Day.

To the constable, &c.

Essex, ff. **W** Hereas it hath been duly proved before me, 13 Car. 2. c. 1.
 that A. B. of D. &c. being a common car- Two witnesses.
 r, (or as the case is) did on the 6th of July last past, being the Prosecution must
 Lord's day, travel with his horses into and through your said pa- be in six months.
 rish of D. contrary to the statute in that case made and provided; By 29 Car. 2.
 reason whereof he hath forfeited twenty shillings to the use of c. 7. in ten days.
 the poor of the said parish: These are therefore, &c. to command
 forthwith to levy the said sum of twenty shillings on the goods
 and chattels of the said A. B. by distress and sale thereof, rendring
 him the overplus, and that you see it employed to the use of the
 poor of your said parish, as by law it ought. Given, &c.

Licence to travel on Horseback on the Lord's Day.

Mid. ff. **F** Orasmuch as J. S. gent. the bearer hereof, came 29 Car. 2. c. 7.
 before me L. M. knt. one of his majesty's justices
 of the peace for this county, and hath this day given me such rea-
 sonable satisfaction as is required by the statute in that behalf made,
 his urgent occasion to travel on horseback upon the next Lord's
 day, from his house, in, &c. in the parish of, &c. in the county
 aforesaid, in the town of C. in the county of D. These are there-
 fore to certify, that I have, according to the directions of the sta-
 tute aforesaid, given free licence and liberty to the said J. S. to un-
 dertake and perform his said journey on the next Lord's day as afore-
 said; hereby requiring you the mayors, bailiffs, constables, and
 other his majesty's officers of the peace, to permit and suffer the said
 J. S. quietly and peaceably to travel on that day thro' your several
 and respective jurisdictions, liberties and precincts, at his discre-
 tion, without any molestation or disturbance whatsoever. Gi-
 ven, &c.

Licence to travel by Water on the Lord's Day.

London. **F** Orasmuch as J. S. esq; &c. (as next above to) 29 Car. 2. c. 7.
 of his urgent occasion to travel by water on the
 next Lord's day, from L. to R. in the county of Surry; and to use
 and employ one or more watermen with a boat or wherry in his

said voyage: These are therefore to certify, that I have (according, &c.) given free licence, &c. to the said J. S. to undertake, &c. on, &c. Hereby requiring you the said mayors, &c. to permit, &c. the said J. S. quietly, &c. to perform his said journey on the next Lord's day as aforesaid: And to use and employ any boat or wherry with watermen at his discretion, without any molestation or disturbance whatsoever. Given, &c.

A Warrant to distrain for a Church-Tax.

To the churchwardens of the parish of, &c. or either of them.

Q. If this be law, for it may be doubted whether these are to be recovered any where but in the spiritual court.

11. Essex, ff. **W** Hereas complaint hath been made unto us A. P. of, &c. churchwardens of the said parish, that C. D. E. F. of, &c. aforesaid, have refused or neglected to pay the sums of money assessed upon them, for and towards the reparation of the parish church of, &c. aforesaid, viz. the said C. D. the sum of 10s. and the said E. F. the sum of 5s. tho' the said assessment was legally made: These are therefore in his majesty's name to command you, that you, or any of you, do levy the said several and respective sums of 10s. and 5s. by distress and sale of the several and respective goods of the said C. D. and E. F. returning to them respectively the overplus, if any be, after the said several sums, and the charges of the distress deducted, and in case there be no goods, whereof a sufficient distress may be taken, then you do certify the same to us, that such further proceedings may be made, as to justice appertains. Given, &c.

A Warrant to apprehend a Person for making Disturbance in the Church and abusing the Minister.

To the churchwardens and constable of the parish of C. in the county of D. or either of them.

6 Ed. 6. c. 4.

12. Essex, ff.

W Hereas A. B. of, &c. and C. D. of, &c. have made oath before me, that E. F. of your parish, on Sunday the day of this instant, &c. did go into the parish church of, &c. in the county aforesaid, and there in time of divine service make a great noise and disturbance, and particularly called G. H. &c. rascal and other unbecoming names, and bid him get him gone out of the said church, as having no business there, to the interruption of divine service, and that the said E. F. was guilty of indecent and irreverent language to Mr. J. L. rector of the said church who was then and there discharging his duty and of other misdemeanors, tending to the breach of the peace, &c.

contempt of religion: These are therefore in his majesty's name command you to apprehend the said E. F. and bring him before or some other justice of peace for this county, to answer what objected against him as aforesaid; and that you do require the said E. F. to bring with him two sufficient sureties to enter into a recognisance for his appearance at the next general quarter-sessions, to be prosecuted according to law. Given, &c.

Warrant against Churchwardens for not fixing Stop-blocks.

To the constable, &c.

London, ff. **W** Hereas A. B. and C. D. churchwardens of the parish of, &c. have been duly con- 6 Ann. c. 21.
7 Ann. c. 27.
ved before us, of a default in not placing and fixing stop-blocks in the said parish of, &c. as the act of parliament directs, and not keeping in repair a large engine for the extinguishing and prevention of fire, &c. as the case is) whereby they have incurred forfeiture of 10l. These are therefore to require you to levy the sum of 10l. by distress and sale of goods of the said churchwardens, and that you pay one moiety thereof to, &c. who informed of the said offence, and the other moiety to the overseers of the said parish of, &c. And for the use of the poor therein, &c.

Warrant for an Engine-Keeper to recover 30 Shillings, &c.

To the constable, &c.

London, ff. **W** Hereas due proof hath been made on the 7 Ann. c. 17.
day of the date hereof before us, G. D.
F. R. two of his majesty's justices of the peace, in and for the city of London, that C. R. engine-keeper, did first bring in parish engine, to help to extinguish a fire, which lately happened in the said parish, which engine was then in good order, and complete, with a socket, nose, and leather pipe, by reason whereof the churchwardens of the said parish ought to have paid unto the said C. R. the sum of 30s. pursuant to the statute in that case made provided, but have hitherto made default in payment thereof: We are therefore to require you to levy the said sum of 30s. by distress and sale of the goods of the said churchwardens, and that you pay the said sum to the said C. R. And hereof fail not, &c.

An Indictment for Striking with a Weapon in Church-yard.

6 El. c. 4.

15. Essex, to wit. **T**HE jurors, &c. that J. O. of D. the nineteenth day of December in the year of the reign, &c. by force and arms at H. in the aforesaid county, in the church-yard of the parish church of H. aforesaid maliciously did draw his dagger upon one R. N. of H. aforesaid yeoman, and with the aforesaid dagger, the said R. N. then at there in the church-yard aforesaid did strike, against the peace of our said sovereign lord the king, and against the form of the statute in such case made and provided.

C H A P. XXXII.

Of the Overseers of the Poor, and the Laws for Relief of the Poor in general.

The poor no where in a more scandalous condition than in England.

Yet no remedy hitherto found for it.

The best way to put that affair under the management of a corporation to be erected on purpose.

1. **T**O succour the distressed is a great and God like act, to relieve the poor is our duty, both by the laws of God and man; and yet in no kingdom or nation, are the poor in a more deplorable and scandalous condition than in Great Britain; insomuch as they are often seen starving in the streets, though the rich live no where in greater plenty. Though this nation languishes in nothing more than in the numbers and increase of our poor, yet has there never been found any method to prevent, or effectually to remedy that evil.

2. 'Tis true, the cries of the poor have pierced the ears and breasts of some of the greatest and best men in the kingdom; my lord Hale in particular, whose memory will descend with honour and blessings to latest posterity, has taken the pains to write a treatise on purpose on this subject; and Sir Josiah Child has, in his treatise of trade, proposed methods for the relief of the poor; and both of them agree in this, that the best way to relieve the poor; is to put that whole affair under the sole care and management of an incorporate body of gentlemen and others who would make it their business duly and truly to mind and perintend the same. In order to this, I have seen a scheme whereby it is proposed, that his majesty should, pursuant to an act of parliament in that behalf to be made, issue under the great seal, into each county of this kingdom, his letters patent, whereby by incorporating several gentlemen and others, who should be

under their sole inspection and management not only the relieving all the poor, but also the mending of all the roads and highways in every county. And by this scheme it does plainly appear, that in a few years there would not be one poor person who was able to work, who would want it; nor one bad way capable of being made good; nor one turnpike left in the whole kingdom. And this without any greater tax or rate than what actually raised for the poor and highways.

3. Before the reformation, there was no great occasion for any law on account of the poor, because in the early ages of christianity there seemed a pious contention among the faithful, who should first bring their offering to the church; And the bishop, to whom the charge of souls was committed, was for that reason thought the fittest person to be intrusted with those oblations; a fourth part of which was allotted for the relief of the poor, as has been before observed.

Formerly the poor relieved by religious houses, &c.

4. And in after ages, when several monasteries and religious houses were founded and plentifully endowed, the poor were there sufficiently relieved, till all those houses were dissolved; out of which ruins sprung up, in a few years, a numerous increase of poor, whose miseries and necessities produced the statute of 43 *Eliz. c. 2.* So that the overseers of the poor (of whose office I am now to treat) owe their very creation and being to this statute, which having nevertheless been found in many respects deficient, hath from time to time produced several others to the same intent; of all which I shall proceed to take notice. But because the office and duty of the overseers of the poor is so blended and mixed with the poor themselves, that they are inseparable, and that it is impracticable to treat of one without the other, I shall proceed to set forth the several statutes now in force, which concern the poor, and after add, in alphabetical order, what I have to say further concerning them.

5. The poor may be divided into two sorts, viz. 1st, Those who are willing, but are not able to work. 2d, Those who are poor.

able, but not willing to work. The statutes relating to the first Statutes about each sort of them.

sort, are 43 *El. c. 2.* 1 *Jac. 1. c. 25.* 7 *Jac. 1. c. 3.* 3 *Car. 1. c. 4.* 13 & 14 *Car. 2. c. 12.* 1 *Jac. 2. c. 17.* 3 & 4 *W. 1. c. 11.* 8 & 9 *W. 3. c. 30.* 9 & 10 *W. 3. c. 11.*

12 *Ann. c. 18.* 9 *G. 1. c. 7.* 11 *G. 2. c. 20.* & 12 *G. 2. c. 29.*

The statutes relating to the second sort, are 5 *El. c. 4.* 18 *El.*

3. 7 *Jac. 1. c. 3* & 4. and 21 *Jac. 1. c. 27.* 3 *Car. 1.*

4. 13 & 14 *Car. 2. c. 12.* 12 *Ann. c. 18.* and 17 *Geo. 2.*

5. Of all which in their order.

6. And first, as to the poor who are willing but are not able to work: By 43 *El. c. 2.* the churchwardens of every parish, and four, three, or two, substantial householders there, as shall be thought meet, (having a respect to the greatness of the parish) to be nominated yearly in *Easter* week, or within one month after *Easter*, under the hand and seal of two or more justices in

Overseers of the
poor appointed,
and their busi-
ness.

the same county, (1 *quor.*) shall be called overseers of the poor of the same parish: And they or the greater part of them, with the consent of two or more such justices, shall take order, for setting to work the children of all such whose parents shall not be the said churchwardens and overseers, or the greater part of them, be thought able to maintain them; and also all others married or unmarried, having no means to maintain themselves and using no daily trade to get their living: And also to raise weekly, or otherwise, (by taxation of every inhabitant, parson, vicar, and other; and of every occupier of lands, houses, &c. in such competent sums as they shall think fit) a stock of flax, hemp, &c. to set the poor on work. And also competent sums of money for the necessary relief of the lame, impotent, old, blind, and other poor, not able to work, and for putting out such children apprentices; to be gathered according to the ability of the parish, and disposed of concerning the premises, as to them shall seem convenient.

When to meet,
&c.

7. Overseers must meet at least once every month in the church, on Sunday after divine service in the afternoon (unless hindered by sickness or other just excuse, to be allowed by two justices) to consider of the poor's wants; and must within four days after their year is expired, and other overseers named, yield an account to two justices of all monies by them received, or rated and not received, and of all stock and money in their hands, or the hands of the poor, and deliver over what remains to the overseers that succeed them. Forfeiture of twenty shillings on each offence in not meeting as aforesaid, or being otherwise negligent in their office. Where a parish is not able to relieve themselves, two justices (*quorum unus*) may tax other parishes, or places out of any parish within the hundred, if necessary: If the hundred shall not be thought able, then the quarter-sessions may tax the county in part, or in whole, at their discretions. Two justices, on refusal of payment of the rates and arrears assessed, and allowed by two justices, may grant a warrant to the officers to make distress and sale. For want of distress, commitment till paid, and they may send to the house of correction those who will not work when appointed thereto. Two justices (*quorum unus*) may commit churchwardens and overseers refusing to account, there to remain till they will account and pay what is due. Churchwardens and overseers may put out, with the assent of any two justices (*quorum unus*) poor children apprentices, where they shall see convenient; boys till the age of twenty-four, girls till twenty-one, or time of marriage. Officers may build (with consent or agreement of the lord of the waste, or by order of quarter sessions, by like leave or agreement of the lord on the waste, cottages for poor impotent people, and may make inmates, the statute 31 *El. c. 7.* notwithstanding, at the parish charge. These houses must be employed only for poor and im-

1 Jac. 1. c. 25.

potent

ent persons, on forfeitures contained in the said statute, 31 *El.*

7. See *chap. XL.* Persons aggrieved by officers assessment, or her act done by them, or justices, may complain to quarter-sessions who shall take order therein; father, grandfather, mother, and mother, and children of poor who cannot work, shall relieve them, according to the assessment of the justices of the county where they dwell (if of sufficient ability); quarter-sessions may take order herein. Persons so rated by justices, shall forfeit 20 s. for every month they fail of payment. Head-officers in corporations have the authority within their jurisdictions, and aldermen of *London* within their wards as justices for the county. See the method where a parish extends itself into two counties or liberties. Justices and head officers of corporations, naming overseers forfeit five pounds. These forfeitures to be levied by quarter-sessions. All forfeitures in this act to the use of the poor, to be levied by churchwarden or overseer, by warrant from two justices, &c. within their limits, by distress and sale, or imprisonment till paid.

8. By the statute 1 *Jac.* 1. c. 25. All persons to whom the overseers of the poor shall (according to the statute of 43 *El.* 2.) bind any poor children apprentices, may take, receive and keep them as apprentices. 1 *Jac.* 1. c. 25.

9. By statute 7 *Jac.* 1. c. 3. Monies given to put poor children apprentices shall be employed in corporate towns, by the corporations, and in other places by the parson or vicar, together with the constables, churchwardens and overseers of the parish, or the most part of them; who shall not forbear or refuse to employ the same according to the terms of the donation, on pain to forfeit five marks each of them so making default, to be divided equally betwixt the poor of the parish and the prosecutor. 7 *Jac.* 1. c. 3.

10. The party receiving money with such an apprentice must give security, by obligation, in double the sum so received, to pay it at the end of seven years next ensuing the date of the obligation, or within three months next after the end of the seven years; and if such apprentice shall die within the seven years, then within one year after his or her death; and if the master, mistress or dame happen to die within the seven years, then within one year after their death, so as the money may be employed in placing the apprentice with some other of the same trade, to serve out his time, at the discretion of the parties interested as aforesaid. The money so given to put out apprentices to be employed within three months after the receipt thereof; and if there shall not be apt persons found to be apprentices in the parish or places where it is given, it shall be employed in the parish next adjoining, by the parties that are trusted with it in the places where it was so given, and there also bond shall be taken as is before declared. How money given to put out poor children apprentices is to be employed, &c.

11. The choice of apprentices shall be out of the poorest of children, whose parents are least able to relieve them, and no such apprentice shall be above the age of fifteen years when he or she is first bound.

12. The parties so trusted shall yearly in *Easter* week, or within one month after, account before two or more of the next justices of the peace; and if there be any obligations or money remaining in their hands, they shall upon such account (or within ten days after) deliver the same to their successors.

On breach of trust, lord chancellor to issue commission, &c.

13. If any officer so trusted shall break the trust reposed in him, misemploy the said money, or do any thing contrary to the act, for which he cannot be punished by this act, the lord chancellor or keeper shall, upon the petition of any person, award a commission to such as he shall think fit, to inquire, hear, and determine such offences. And if the commissioners shall find money so misemployed, they shall, in places not corporate have power to rate, raise and collect it upon the parties so offending, or otherwise upon the able inhabitants of the city, town or parish so in default, as the said commissioners, or the greatest part of them, shall think fit; and shall return the said commission, together with the manner of executing the same into the chancery, within three months next after such execution thereof.

3 Car. 1. c. 4. overseers of poor may set up any trade, &c.

14. By the statute 3 Car. 1. c. 4. §. 22. the aforesaid statute 1 Jac. 1. c. 25. is again continued and confirmed. And churchwardens and overseers of the poor, may, with consent of the justices (*quorum unus*) where there are two; if not, with the assent of one justice, set up, use, and occupy any trade, mystery, or occupation, only for setting to work, and better relief of the poor of their parish.

13 & 14 Car. 2. c. 12.

Who are to be accounted poor of a parish.

15. By statute 13 & 14 Car. 2. c. 12. churchwardens and overseers of the poor, complaining to one justice within four days after any persons coming into their parish to settle in a tenement under 10*l.* a year, may have such persons removed (if likely to be chargeable) by two justices (*quorum unus*) of the division, &c. to such parish where they were last legally settled either as a native, householder, sojourner, apprentice, or servant for the space of forty days at the least, unless they give security for the indemnity of the said parish, to be allowed by two justices, persons aggrieved may appeal to quarter-sessions. Persons carrying with them a certificate from the minister, churchwarden, and overseer, of having a dwelling-house in their parish, and their being inhabitants there, may go into any other place to work. And in such case, if the persons do not return again to their habitations when their work is done, or if they fall sick while they are at work, it shall not be deemed a settlement, but they may be removed by two justices to their usual place of abode. Persons refusing to go, or returning ag-

may be sent by one justice to the house of correction, and punished as vagabonds. Churchwardens, &c. refusing to receive such persons, and to provide for them, one justice may bind over such officers, for contempt, to quarter-sessions or assizes. See the same act, in respect to corporations for erecting work-houses in *London* and *Westminster*, &c. and all other corporations, and about the government of them. See also the clause where-by townships in *Lancashire*, *Cheshire*, *Derbyshire*, *Yorkshire*, *Northumberland*, *Durham*, *Cumberland* and *Westmoreland*, and other counties, may provide for their poor as parishes do. This statute is made perpetual by 12 *Ann. c. 18.* except what relates to corporations therein mentioned, to which the act 22 & 23 *Car. 2. c. 18.* relating, and being expired, is not here treated of.

16. In the same act there is a clause enacting, That justices of peace in their quarter-sessions may cause to be transported rogues, &c. duly convicted and adjudged incorrigible, to the *English* plantations beyond sea.

17. By statute 1 *Jac. 2. c. 17.* confirmed and explained, and a clause added, that the forty days were to be accounted from the time of the delivery of notice in writing, by the poor person, of the house of his abode, and the number of his family, if any, to one of the churchwardens or overseers, &c.

18. By 3 & 4 *W. & M. c. 11.* the acts 13 & 14 *Car. 2. c. 11.* and 1 *Jac. 2. c. 17.* as to what relates to settlements are revived, and forty days continuance in a parish to make a settlement, shall be from publication of notice in writing, which he or she shall deliver of the house of abode, and number of family, if any, to the churchwardens and overseers of the poor; which notice the said churchwarden, &c. if required, is to read or cause to be read publicly, immediately after divine service in the parish church, the first Lord's day; the said notice to be registred in the poor's account-book, by the officer aforesaid. No soldier, &c. or workman employed in his majesty's service, shall have a settlement as aforesaid, unless dismissed from his majesty's service; 40 s. penalty for the officer aforesaid refusing or neglecting to read such notice; conviction by two witnesses on oath before one justice, to the use of the party grieved; for want of distress, commitment for a month, without bail. Officers aforesaid neglecting to register notice, forfeit on conviction, as before, 40 s. to the use of the poor, to be levied as before, and committed as before. Persons executing any publick annual charge in a parish on their own account, during one whole year, or who shall be charged with, and pay his share towards the publick taxes or levies of the parish, shall be deemed to have a legal settlement there, though no notice in writing is delivered, or, &c. Any unmarried person not having a child, &c. that shall be lawfully hired into any parish for one year, shall also make a settlement without notice. Being bound apprentice by indenture,

The forty days to make a settlement to be accounted from the notice given, &c.

Persons executing a parish office, thereby gain a settlement.

indenture, and inhabiting in any town, &c. such binding and habitation shall be a good settlement without notice. But *N. B.* This is altered by a statute made 12 *Ann. c. 18.* and amended and explained by 31 *Geo. 2. c. 11.* which see below, chap. XXXV. Persons aggrieved may appeal to the quarter-sessions who may finally determine.

Parish officers
refusing to re-
ceive poor sent
by two justices,
forfeit 5*l.*

19. Churchwardens, &c. refusing to receive any person sent by order of two justices, forfeit 5*l.* to the poor of the parish from which the said person is removed: Proof thereof to be made by two witnesses on oath before any justice of the county &c. to be levied by distress and sale; for want of distress, to be committed for forty days without bail, &c. Persons aggrieved may appeal to the next quarter-sessions. A book shall be kept in every parish, wherein the names of all those that receive collection shall be registered with the day and year when first admitted to have relief; and the occasion which brought them under that necessity.

Parishioners must
yearly make new
lists, &c.

20. Parishioners in *Easter* week yearly, or oftner, if necessary, must meet in the vestry, and make new lists for the poor and none but those in the list allowed to receive alms, but by authority under the hand of one justice residing in such parish, or any, or else near adjoining, or by order of sessions, except in cases of plague and pestilential diseases, &c. Parishioners, except alms men, may be evidence against churchwardens, &c. of their mispending the poor's money.

8 & 9 *W. 3.*
c. 30.
Poor coming
with a certifi-
cate, &c. badge.

21. By statute 8 & 9 *W. 3. c. 30.* persons coming to any parish to inhabit, shall at the same time bring a certificate to the churchwardens or overseers of the poor of the parish, where such person shall come to inhabit, under the hands and seals of the churchwardens, &c. of any other parish, or the major part of them, or of overseers only, if there are no churchwardens, to be attested by two witnesses, thereby owning and acknowledging the said person mentioned in the certificate to be an inhabitant legally settled in that parish, &c. Every certificate being subscribed and allowed by two justices, shall oblige the parish to receive and provide for the person mentioned in the certificate together with the family, as inhabitants of that parish, whenever they shall become chargeable to, or forced to ask relief of that parish, &c. to which such certificate was given, and then, and not before, it shall be lawful for any such person, and his or her children, though born in the parish, (not having otherwise acquired a legal settlement there) to be removed to the parish, &c. from whence such certificate was brought. Persons receiving alms shall wear a badge publicly on the right shoulder sleeve with wife and children (such child only excepted, as shall be by officers of the poor permitted to live at home, in order to take care of an impotent parent); persons refusing, &c. shall on complaint to one justice have their relief suspended, abridged, and withdrawn.

Badge.

drawn, or may be sent to the house of correction, for not more than one and twenty days, to be whipped and kept to hard labour. Churchwarden or overseer relieving any person having and wearing a badge, being convicted on oath of the witness before one justice, shall forfeit 20s. by distress, &c. warrant from one justice, to the poor and informer. Justices

quarter-sessions, on appeal to them about settlement of any person, or on notice of appeal, &c. tho' such appeal is not prosecuted, shall award costs for whom appeal is determined, or whom such notice did appear to have been given. Proof must be made of notice to persons ordered to pay costs living out the jurisdiction, &c. A justice of the county where such person inhabits, on request to him made, with a copy of the order and costs produced, shall cause money to be levied by distress, for want, commitment for twenty days.

Justices to award costs on an appeal, &c.

22. Persons not having child or children shall not gain a settlement in any parish, unless they shall continue in a service the space of one whole year. Persons refusing to take apprentices to them, by 43 *El. c. 2.* forfeit 10*l.* to be levied by distress and sale of goods, by order of two justices. Appeal against an order for removal to be determined at quarter-sessions, and not elsewhere: Proviso for justices for the liberty of *St. Alban's*.

Removal.

23. By statute 9 & 10 *W. 3. c. 11.* no person whatsoever, 9 & 10 *W. 3. c. 11.* shall come into any parish by certificate, shall by any act whatsoever be adjudged to have procured a legal settlement in any parish, unless he shall really, and *bona fide*, take a lease of tenement of the yearly value of 10*l.* or shall execute some usual office in such parish, being legally placed in such parish. Certificate.

24. By statute 9 *Geo. 1. c. 7.* no justice of the peace shall order relief to any poor person, before oath be made before such justice of reasonable cause, and that the person had applied to parishioners at some vestry or publick meeting, or to two of the overseers of the poor of the parish, and was by them refused to be relieved, and until the justice hath summoned the overseers to shew cause why relief should not be given, and the person so summoned be heard, or hath made default in not appearing. 9 *G. 1. c. 7.* No justice to order relief till after application made to the vestry, &c.

25. Persons ordered by justices to be relieved, are to be registered in the parish books, as those who are to receive collection, as long as the cause for relief continues, and no longer; no officer of any parish (except upon emergent occasions) shall bring to the parish account any money he shall give to the poor not registered, on pain of forfeiting 5*l.* leviable by distress by the warrant of two justices, for the use of the poor of the parish, at the direction of the said justices. Poor are to be registered in parish book.

26. Churchwardens and overseers of the poor of any parish, with the consent of the major part of the inhabitants, may purchase or hire any house or houses in the parish or place, and keep the poor therein, and keep the contract

contract with persons for the lodging, keeping or employing the poor; and there they are to keep them, and take the benefit of their work and labour for the better maintenance and relief of such persons. And in case any poor shall refuse to be lodged, kept or maintained in such house or houses, he shall be struck out of the parish books, and not to be intitled to relief.

27. Where parishes are too small, two or more of such parishes, with the approbation of a justice of peace, may unite in purchasing or hiring houses for the purposes aforesaid. And churchwardens, &c. of one parish, with the consent of the major part of the parishioners, may contract with the churchwardens, &c. of any other parish for the lodging and maintenance of the poor.

28. But no poor, or their apprentices, children, &c. shall gain a settlement in the parish, town or place, to which they shall be removed, by virtue of this act.

No person gains a settlement by a purchase under 30*l*.

29. No person shall gain a settlement in a parish by virtue of any purchase therein, for which the consideration doth not amount *bona fide* to 30*l*. for any longer time than such person shall inhabit the estate purchased, and then shall be liable to be removed to the place where last legally settled.

Nor by paying to the highways, &c.

30. Persons taxed to and duly paying the rates to the scavengers, or to the highways, shall not thereby gain any legal settlement in any town or parish.

No appeals to be proceeded upon before notice, &c.

31. No appeal from any order for removal of any poor shall be proceeded upon at the quarter-sessions, unless reasonable notice be given by the churchwardens or overseers of the poor of the parish, making the appeal to the churchwardens, &c. of the parish from which such poor person shall be removed; and reasonable time of notice be not given, the justices may adjourn the appeal to the next quarter-sessions.

And to order the appellants their charges, &c.

32. If the justices at the quarter-sessions upon appeal shall determine in favour of the appellant, they are to order the appellant to pay so much money as shall be reasonably expended by the parish, on whose behalf the appeal was made, for the relief of the poor people, between the time of undue removal and determination of the appeal; to be recovered in like manner as costs and charges upon appeal are by 8 & 9 *W. 3. c. 30*.

How the relief for poor prisoners in the King's Bench and Marshalsea prisons shall be paid.

33. By stat. 11 *Geo. 2. c. 20*. the treasurer of every county in *England* and *Wales*, shall, on or before the first day of *Trinity* term yearly, pay over to the lord chief justice of *England*, or knight marshal for the time being, or to such persons as they shall appoint, taking their acquittances for the same, or in default of the said chief justice to the next most antient justice of the *King's Bench*, the several sums of money which shall be due from any such respective county, (by virtue of 43 *Ed. 1. c. 2*.) equally to be divided between the prisoners of the *King's Bench* and *Marshalsea* prisons, for the charitable purposes in

act, 43 *Eliz. c. 2.* in that behalf mentioned. Which act *Eliz.* so far as relates to the method of raising money for the *King's Bench* and *Marshalsea* prisons, is repealed by 12 *Geo. c. 29.* with a proviso nevertheless, that such sums as have been annually paid to the said prisons, shall be paid out of the monies arising by virtue of the said act of 12 *Geo. 2. (viz. by a general county rate)* at such time, and in such manner as prescribed by the act 11 *Geo. 2. c. 20.*

34. This is a short abstract of all the laws now in being relating to the first sort of poor, *viz.* Those who are willing but not able to work. We shall next proceed to those laws now in being, which relate to the second sort, *viz.* Those who are idle, but are not willing to work; and shall begin with 5 *Eliz.*

4. by which it is enacted, that two justices may warn all single persons, under the age of thirty years, to go to service at a time they shall limit; and any woman above the age of twelve years, and under forty, being unmarried, may, by two justices be compelled to go to service; and if they refuse so to do, and continue to live idly, having no visible estate or a lawful way to maintain themselves, they may be sent to the house of correction, or bound over to the sessions; and being so retained, shall not depart from their service without one quarter's warning before two lawful witnesses, or some lawful cause, to be proved before one justice of peace or head officer, on pain of imprisonment without bail, by two justices.

5 *El. c. 4.*
What persons
may be obliged
to go to service
by two justices,
&c.

35. None shall put away his servant before the end of his term without a quarter's warning; nor no servant, having served in one city or town, shall go to serve in another, without a testimonial; and the servant that brings not such a testimonial, shall be imprisoned till he procure one: And if he do not procure one within one and twenty days after his imprisonment, or shew a false one, he shall be whipped as a vagabond; and the master that retains a servant without such a testimonial shall forfeit 5 *l.*

36. Those who work by the day or week shall continue at work betwixt the middle of *March* and the middle of *September*, from five in the morning till between seven and eight at night, except two hours allowed for breakfast, dinner and drinking, and half an hour for sleeping from the midst of *May* to the middle of *August*; and all the rest of the year from twilight to twilight, except an hour and half allowed for breakfast and dinner, on pain to have one penny defalked out of their wages for every hour's absence.

What hours labourers are obliged to work, &c.

37. None that take work by the great shall leave the same before it be quite finished, except for nonpayment of his wages, or other lawful cause, on pain of one month's imprisonment without bail, and to forfeit 5 *l.* to the party grieved, besides his costs and damages, to be recovered at common law.

And shall not leave their work before finished.

38. None

Punishment of
servants assault-
ing master or
mistress, &c.

38. None retained in service to work shall depart without licence, on pain of one month's imprisonment.

39. If any servant, or other, shall be convicted before two justices of peace or a chief officer, by his own confession, or the oath of two witnesses, to have assaulted his master, mistress, dame or overseer, he shall be imprisoned for one year, or less if the justice or chief officer shall think fit; and if the party shall be thought to deserve a more severe punishment, then to receive such open punishment (life and member excepted) as the justice in sessions, or chief officer and four of the discreetest men in the corporation shall think convenient.

40. Artificers shall work in hay-time and harvest, on pain of being set in the stocks two days and one night by the constable or he forfeits 40 s.

And of one re-
fusing to be
bound appren-
tice.

41. If any person fit to be an apprentice refuse to serve upon demand, one justice of peace, mayor or head officer, unto whom complaint shall be made, hath power to commit him to gaol till he be willing to serve accordingly. But none shall be bound to enter into an apprenticeship, other than such as be under the age of one and twenty years.

42. If there shall arise any difference between the master and the apprentice, one justice of peace in the county, or mayor, or head officer in a corporation or market-town, shall have power to reconcile it, if they can; if not, then to bind over the master to the next quarter session, where the justices of the peace, or any four of them, (*quorum unus*) or the head officer, with the consent of three of his brethren, shall, upon default found against the master, in writing under their hands and seals, have power to discharge the apprentice of his service; and if default be found in the apprentice, then to inflict such punishment upon him as in their discretions shall be thought fit.

Remedy when
an apprentice
runs into another
county.

43. When an apprentice departs from his master's service into another county or corporation, it shall be lawful for the justice of peace, or head officer, being a justice of peace, to direct a *capias* to the sheriff or other chief officer, for his apprehension; and being taken, the said justice of peace or chief officer shall commit him to gaol, till he give good security that he will honestly serve out his time.

18 El. c. 3.
Two next ju-
stices may take
order about a
bastard child, &c.

44. By statute 18 *El. c. 3.* the two next justices (*quorum unus*) may take order as well for the punishment of the mother and reputed father of a bastard child, as also for the relief of that parish where it is born, by charging the said mother and father with the sustentation thereof, by payment of money weekly or otherwise. If two justices adjudge *A.* to be the father of a bastard, if the child is a bastard, *A.* is concluded by the judgment of the justices, and cannot falsify it, and say that he is not the father; his only remedy is by appeal; but if the child was born

wedlock, then the judgment was *coram non judice*, and void; and consequently no person concluded by it. 1 *Ld. Raym.* 471.

45. If the mother and father perform not the justices order therein, they shall be imprisoned without bail, except he, she they give security to perform it, or else to appear at the next quarter-sessions, and also to abide the order of the greater part of the justices there, if any shall be there made; if not, then to perform that made by the two justices.

46. By statute 7 *Jac.* 1. c. 4. justices of the peace shall commit to the house of correction lewd women which have bastards that may be chargeable to the parish, there to be punished and to work one whole year; and if they offend again, they shall not be enlarged without giving good security to offend no more.

7 *Jac.* 1. c. 4.
And commit the mother to the house of correction,

47. By statute 21 *Jac.* 1. c. 27. It shall be murder for a mother to conceal the death of her bastard child, unless she can prove by one witness at least, that it was still born.

21 *Jac.* 1. c. 27.
Murder for the mother to conceal the death of a bastard, &c.

48. By a stat. 3 *Car.* 1. c. 4. all justices of peace within their several limits and sessions, may do and execute all things concerning that part of 18 *El.* c. 3. which concerns bastards, that by justices of peace in the several counties are by the said statute directed to be done.

3 *Car.* 1. c. 4.
Quarter-sessions may do what two justices can.

49. By statute 13 & 14 *Car.* 2. c. 12. Constables, head-boroughs and tithingmen, out of purse for conveying vagabonds, to houses of correction or workhouses, they, the churchwardens and overseers of the poor, and other inhabitants of the parish, may tax all chargeable by 43 *El.* c. 2. which rate being affirmed under the hand and seal by two justices of peace, the constables, &c. by warrant under the hand and seal of two justices, may levy it by distress and sale of goods; made personal by stat. 12 *An.* c. 18.

13 & 14 *Car.* 2. c. 12. How constables, &c. are to reimburse themselves their charges in passing vagrants, &c.

50. Churchwardens and overseers of the poor where any bastard child is born, may seize so much of the goods and profits of the lands of the putative father and lewd mother, as two justices of the peace shall order, towards discharge of the parish, if confirmed at the sessions, who may make an order for the churchwardens, &c. to dispose of the goods by sale or otherwise, they shall think fit, and receive the profits of so much of their goods as shall be ordered by the sessions.

Parish officers may seize the effects of parents of bastards, &c.

51. Persons sued for what they do in execution of this act, shall plead the general issue, and give the special matter in evidence, and shall have treble costs if the verdict be for them, or if the plaintiff be nonsuit or discontinue.

C H A P. XXXIII.

Of Vagrants or Vagabonds, and the Duty of Overseers of the Poor, and other Parish Officers, with respect to them.

Of the constant growth and supply of vagabonds, &c. in England.

Stat. 12 Ann. ch. 23. ineffectual.

Stat. 17 G. 2. c. 5. Idle and disorderly persons described.

1. **B**Efore the statute 12 Ann. c. 23. there were many acts of parliament made for relieving the publick from the great inconvenience occasioned by idle people, who having, using no honest means of livelihood, wander abroad, and by begging, or other blameable practices, live upon the mistaken charity, or unweariness of others. These (instead of affording a constant supply to the gallows, and for transportation to the American colonies) might be made useful to themselves and the country at home, if only a reasonable degree of vigilance in the magistrates in the counties, cities and boroughs, and of the parish officers in their several districts, was exerted in executing the laws. We have, as is said, often endeavoured to cure the body politick of this evil, an evil in some degree owing to liberty, and better endured than cured by destroying or impairing that cause of it. But it being found by experience that all former laws were ineffectual, a statute 12 Ann. c. 23. was made to reduce them all into one act, and to repeal several of the former laws therein mentioned. This statute after the experience of years, being also found ineffectual, in the 13th of his late majesty king George the 2d, another act was made, which (by the clause of it) repealed that of 12 Ann. but enacted that all the laws therein mentioned to be repealed, were declared to be, and continue repealed. This was stat. 13 Geo. 2. c. 24. intitled, *An act for amending and enforcing the laws relating to rogues, vagabonds, and other idle and disorderly persons, and for reducing the same into one act of parliament; and also for amending the law for erecting, providing and regulating houses of correction.* This act having been also thought defective in several parts hath been since repealed by stat. 17 Geo. 2. c. 5. intitled, *An act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and to house of correction.*

2. This act (17 Geo. 2. c. 5.) recites, that the number of rogues, vagabonds, beggars, and other idle and disorderly persons, daily increases to the great scandal, loss and annoyance of the kingdom; and then it enacts, that all persons who threaten to run away, and leave their wives or children to the parish, and all persons who unlawfully return to the parish or place whence they have been legally removed by order of two justices

of the peace, without bringing a certificate from the parish, &c. whereunto they belong; and persons, who not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages given to other labourers in the like work in the parish, &c. where they then are; and persons going about from door to door, or placing themselves in streets, highways or passages, to beg or gather alms in the parishes, &c. where they dwell, shall be deemed idle and disorderly persons; and being convicted before one justice by his own view, or by their own confession, or oath of one credible witness, he may commit them to the house of correction, there to be kept to hard labour for any time not exceeding one month.

Conviction by
one justice.
Punishment.

3. Any person may apprehend and carry before a justice, any such persons going about from door to door, or placing themselves in streets, &c. And if they resist or escape from the person apprehending them, they shall be subject to the same punishment as rogues and vagabonds are made liable to by this act.

Any person may
apprehend such
as in sect. 2.

And the justice, by warrant under hand and seal, may order any overseer of the poor of the parish, &c. where such offender was apprehended, to pay the sum of five shillings to the persons in any such parish or place so apprehending them, for every offender so apprehended. And it shall be allowed him in his account, producing the justice's order, and a receipt under the hand of the person or persons to whom such sum was paid. On oath before the said justice, that the overseer neglects or refuses to pay the said sum, he may by warrant, &c. order it to be levied by distress and sale of the overseer's goods; and the overplus (if any) after the charges of such distress satisfied, shall be returned to such overseer, and in this case he shall not be allowed it in his account.

Resisting or
escaping to be
punished as
rogues, &c.
5 s. to persons
apprehending.
How levied.

4. The reader may observe, that the two foregoing sections relate to a sort of people whom this new statute has distinguished by the name of idle and disorderly persons, as being the lowest class of offenders in this kind. The next or middle and second class, is that of rogues and vagabonds; and by this statute, all persons going about as patent-gatherers, or gatherers of alms, under pretence of loss by fire, or other casualty; or going about as collectors for prisons, gaols or hospitals; all fencers and bearwards, common players of interludes, and persons who for hire, gain or reward, act, represent, or perform, or cause to be acted, represented, or performed, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any parts or part therein, not being authorized by law; all minstrels, jugglers, persons pretending to be gypsies, or wandering in the habit or form of Egyptians, or pretending to have skill in physiognomy, palmistry, or like crafty science, or pretending to tell fortunes, or using any subtil craft to deceive and impose on any

Rogues and va-
gabonds de-
scribed.

of his majesty's subjects; or playing or betting at any unlawful games or plays; persons who run away and leave their wives and children, whereby they become chargeable to any parish or place; petty chapmen and pedlars wandering abroad, not being duly licensed, or otherwise authorized by law; and all persons wandering abroad, and lodging in alehouses, barns, out-houses or in the open air, not giving a good account of themselves; and all persons wandering abroad and begging, pretending to be soldiers, mariners, seafaring men, or pretending to go to work in harvest: and all other persons wandering abroad and begging are to be deemed rogues and vagabonds. But this is not to extend to soldiers wanting subsistence, having lawful certificates from their officers, or the secretary at war, or to mariners or seafaring men, licensed by writing under hand and seal of a justice, &c. (setting down the time and place of their landing or discharge, and the place to which they are to pass, and the names of the chief towns or places through which they are to pass, and limiting the time of their passage) while they continue in the direct way to the place to which, &c. and during the time limited; or to persons going abroad to work at lawful work, in the time of harvest, so that they carry with them a certificate in writing signed by the minister, and one of the churchwardens or chapelwardens, or one of the overseers of the poor of the parish, &c. where they inhabit; declaring that they have a dwelling-house or place there, in which they inhabit.

Exception for
soldiers and ma-
riners, &c.

5. The reader may observe, that the offenders described in the fourth section above, are of an higher nature than those described in the second section; and the offenders are therefore enacted to be deemed rogues and vagabonds, whereas those in the second section were only to be deemed idle and disorderly persons. Thus (in the second section) persons who threaten to run away, and leave their wives and children to the parish, are offenders of an inferior class to those who (as in the fourth section) actually do run away, and leave, &c. Again, in the second section, persons who not having wherewithal to maintain themselves, live idle, and refuse to work at the usual wages, are offenders of a class inferior to those who employ themselves in fraudulent or vicious practices, for their livelihood, as impostors in collecting charities, fencers, bearwards, players, jugglers, fortune-tellers, &c. Again, (in the second section) people who beg in their own parishes, are offenders in a lower and lesser degree than those who (in the fourth section) wander abroad, and lodge in alehouses, barns and out houses or the open air, not giving a good account of themselves; or wander abroad and beg.

Difference be-
tween offenders
of the first and
of the second
class.

Incorrigible
rogues de-
scribed.

6. Having in the fifth section, in several instances, shewn the difference in degree between the offenders of the lower and middle class, the reader may the more clearly perceive how they still differ from those of the highest and third class, which the

statute, in the next place, takes notice of, *viz.* incorrigible rogues; this branch begins with end-gatherers offending against an act made in the 13th year of his late majesty king George the 1st, intituled, *An act for the better regulation of the woollen manufacture, and for preventing disputes amongst the persons concerned therein; and for limiting a time for prosecuting for the forfeiture pointed by an act of the 12th year of his majesty's reign, in case of non-payment of the workmens wages in any other manner than in money, being convicted of such offence; and persons apprehended as rogues or vagabonds, and escaped from the persons apprehending them, or refusing to go before a justice or justices, or to be examined upon oath before such justices; or refusing to be conveyed by any such pass as in this act after direction or knowingly giving a false account of themselves on such examination, after warning given them of their punishment; rogues or vagabonds who shall break or escape out of any house of correction, before the expiration of the term for which they were committed, or ordered to be confined by virtue of this act; and persons who, after having been punished as rogues and vagabonds, and discharged, again commit any of these offences; these are to be deemed incorrigible rogues, within the true intent and meaning of this act.*

The reader may observe upon the sixth section, that (except the end-gatherers) the persons, who are enacted to be deemed incorrigible rogues, are persons, who, to their being rogues and vagabonds before, or lawfully questioned or prosecuted as such under the terms of this act, have to such their offences superadded some other gross act of misbehaviour, as arising from a lawful arrest for this purpose, or refusing to be amenable to the law; or repeating their former offences, or offences of equal degree or malignity. The justice is expressly directed by the act to warn them of the danger of giving a false account of themselves, on their examination before him; a piece of civility more agreeable to the mercy of a *British* legislature, than proper or competent to the nature of the offence which it is intended to prevent: For when a vagabond, being put under the solemn obligation of an oath by a magistrate, shall appear obstinate and hardened, as to forswear himself, equally defying all laws human and divine, and believing the omnipresent God insufficient to know as little of him as the justice of peace, it should seem a benefit to the publick to send such a person out of the kingdom, to a country thinner of people, where he would do less mischief, and be more easily compelled to apply himself to labour. The before mentioned statute of 13 G. 1. as relates to the description of end-gatherers, being the species of incorrigible rogues above, *sect.* 6. is as follows, persons, who (after the first day of June 1727.) are found buying, receiving, or any ways carrying or convey-

Difference between offenders of the third or highest class, and those of the two former.

End-gatherers.

ing ends of yarn, wefts, thrums, short yarn, or other refuse of cloth, drugget, or other woollen goods, or goods mixed with wool, (flocks and pinions only excepted) in any bag or bags, or other convenience for carrying such ends of yarn, &c. And by the said former act, viz. 13 G. 1. any constable, &c. by warrant of justice, may search and examine such person and bag, &c. And if on search he finds on or with such person any such ends, &c. he is to carry him or her before a justice, &c. where found and discovered so offending; and the person, upon conviction of any of the said offences, on oath of one witness or by confession, &c. shall be deemed a dangerous and incorrigible rogue, vagrant, or person, and liable to be punished as such by 12 Ann. now repealed.

Any person may apprehend offender.

8. If any person shall be found offending against this act, shall be lawful for any person whatsoever to apprehend the person so offending, and to convey, or cause to be conveyed to some justice, &c. the person so apprehended, to be proceeded against in such manner as in this act is after directed: And if a constable or other such officer refuses or neglects to use his best endeavours to apprehend or convey to some justice, such offender, it is a neglect of duty in such officer, and he shall be punished as in this act is after directed. And if any other person being charged by any justice, &c. so to do, refuses or neglects to use his best endeavours to apprehend and deliver to the constable or other such officer, or to carry such offender before some justice, &c. where no constable or other such officer can be found, such person so offending, as aforesaid, being thereof convicted upon view, or by oath of one or more credible witnesses before one or more justices, &c. he forfeits ten shillings to the use of the poor of the parish, &c. where, &c. to be levied by distress and sale, &c. by warrant from any justice, &c. the overplus (if any) after charges of distress satisfied, to be returned to such offender. If any person not being a constable, or other such officer, apprehend such rogue or vagabond, and deliver him or her to a constable, or other such officer, or convey or cause to be conveyed him or her to some justice, according to the directions of this act, or if a constable or other such officer, so apprehend and convey such rogue or vagabond, such justice, &c. may reward such constable or other person, by making an order under hand and seal, upon the high or chief constable, to pay ten shillings to the person so apprehending, within one week after demand, and producing such order, and upon his giving a receipt for the same; and the treasurer of the county, &c. shall allow or pay it to the high constable on his passing his account and delivering the order and receipts, and his own, to the treasurer; and the treasurer is to be allowed it at sessions, upon producing and delivering up his vouchers. Cities, &c. where there are no high constables, the petty constables, &c. are to have

Reward for apprehending.

How paid.

Method of allowing payment.

low

allowance upon producing and delivering up their vouchers. And if any high or chief constable, or where no such, if a petty constable, &c. refuses or neglects to pay ten shillings (as above in this section) such justice, &c. may by warrant, &c. levy 20s. by distress, &c. and thereout allow the above reward of ten shillings to the person intitled, and such other recompence for his trouble, loss of time and expences, as the justices, &c. think fit; the overplus (if any) to be returned to the constable, &c. on demand.

9. *Note*; Any persons may arrest offenders without any other warrant than the act: That power is given them for their own conveniency, and speedy remedy. But they must do it under the penalty of ten shillings, if charged by a justice so to do.

10. The justices for every county, &c. or two of them, are General privy search. four times in the year, or oftner, to meet in their divisions, and by warrant command the peace officers of every hundred, parish, &c. in their divisions, who shall be assisted with sufficient men of the same places, to make a general privy search in one night throughout their limits, for the finding and apprehending of rogues and vagabonds; and every justice shall also, on receiving information that rogues and vagabonds are in any place within his jurisdiction, issue his warrant to the constable, or other officer of such place, to search for, and apprehend such rogues and vagabonds, and such as they find and apprehend upon such search, they are to cause to be brought before any justice, &c.

11. Rogues or vagabonds apprehended according to any of Examination of rogues, &c. the above directions, and brought before a justice, are to be examined on oath, and so is any other person, for his information of the condition and circumstances of the persons apprehended, and of the parish, &c. where last legally settled; the substance of the examinations to be put into writing, and subscribed In writing, signed, &c. or signed by the persons examined, and by the justice, and transmitted to the next general or quarter-sessions to be kept on record; and such justice is to order all persons so apprehended to be publicly whipt by the constable, petty constable, or tithing man, or some other person to be appointed by such constable, &c. of such parish, &c. where such persons were apprehended, or to order such persons to be sent to the house of correction, there to remain until the next general or quarter sessions, or for any less time; and after such whipping or confinement, such justice may, if he think convenient, by a pass under hand and seal as after directed, cause such person to be conveyed to the place of his last legal settlement; and if it cannot be found, then to the place of birth, or if under the age of fourteen years, and have a father or mother living, then to the place of the abode of such father or mother, there to be delivered to some churchwarden, chapelwarden, or overseer of the poor of such parish, &c.

12. The pass (enacted as above, *sect. 11*) is to be in the form, or to the effect following :

To the constable of _____ in the county of _____
 or to the tithing-man or other officer (*as the case shall be, or if the offender is committed to the house of correction, then to the governor or master thereof*) and also to the constables and other officers whom it may concern, to receive and convey; and to the churchwardens, chapelwardens, or overseers of the poor of the parish, town, or place (*as the case shall be*) of _____ in the county of _____ or either of them, to receive and obey.

W Hereas _____ was (or were) apprehended in the parish of _____ (or in the town of _____ or other place, describing it) as a rogue and vagabond, or as rogues and vagabonds, videlicet, wandering and begging there, (or as the case shall be) and upon examination of the said _____ taken before _____ upon oath (which examination is hereunto annexed) it doth appear, that his, her or their last legal settlement is at _____ in this county (or in the county of _____) or that the said _____ was (or were) born in the parish of _____ in this county, (or in the county of _____) and hath (or have) not since obtained any legal settlement; or that the said _____ is (or are) under the age of fourteen years, and hath (or have) a father or mother living or abiding in the parish (or town) of _____ (or other place, describing it): These are therefore to require you the said constable or other officer, (or governor or master of the house of correction, as the case shall be) to convey the said _____ in the next direct way to the said parish (or town) of _____ (or other place) within the said county, and there to deliver him (her or them) to some churchwarden, chapelwarden, or overseer of the poor of the same parish, (town or place) to be there provided for according to law (or in case the said parish, town or place, to which such person or persons is or are to be sent, lies in some other county, riding, division, corporation, or franchise, having separate general or quarter sessions of the peace, then the form shall be as follows, viz.) to convey the said _____ to the parish (or town) of _____ that being the first parish (or town) in the next precinct through which he (she or they) ought to pass in the direct way to the said parish (or town) of _____ to which he (she or they) is (or are) to be sent, and to deliver him (her or them) to the constable or other officer of such first town (or parish) in such next precinct, together with this pass and the duplicate of the examination of the said _____ taking his receipt for the same, and the said _____ is (or are) to be thence conveyed on in like manner to the

the said parish (or town) of *there to be delivered to*
 the churchwarden, chapelwarden or overseer of the poor of the
 same parish, (town or place) to be there provided for according to
 law. And you the said churchwardens, chapelwardens and over-
 seers of the poor, are hereby required to receive the said person, (or
 persons) and to provide for him (her or them) as aforesaid.

13. The justice, &c. is to make, or cause to be made a du- Duplicate of the
 plicate of the pass, and to sign it, and transmit it to the next ge- pass.
 ral or quarter sessions, to be kept on record, and shall annex
 the duplicate of the examination to the pass, and send it with Recorded.
 the same, and the said pass, examination and duplicates thereof And evidence,
 may be read in any court of record in *England, Wales, or Ber-* &c.
wick, as evidence.

14. Where any offender against this act is committed, as
 aforesaid, to the house of correction, to remain till next sessions;
 and the justices at sessions, on examination of the circumstances
 of the case, adjudge such person a rogue or vagabond, or an
 incorrigible rogue, they may, if they think convenient, order
 such rogue, &c. to be kept there to hard labour, not exceeding
 twelve months more, and an incorrigible rogue not exceeding two
 years more, nor less than six months from order of sessions; and
 during confinement to be whipped at times and places, and in
 such manner, as in discretion they think fit; and such person (if
 sessions think convenient) may be afterwards sent away by pass
stat. mutand. and if such person, being a male, is above twelve
 years old, they may before discharged from house of correction
 send him to the king's service by sea or land; and if such incor-
 rigible rogue so ordered by sessions to be detained, &c. shall be-
 fore expiration of the time, &c. break out or make his escape,
 or offend again in like manner, it shall be felony, and on
 conviction he shall be transported, not exceeding seven years.

15. *Note;* The clause to make it felony without clergy to
 turn from such transportation, is omitted in this new act.
etc. Whether it be implied.

16. It is to be understood, not only on the direction for Caution as to
 transportation in the 14th section, but in all acts or clauses of the conviction.
 which affect the life, liberty, or property of the subject, by
 creating an offence with a penalty, or creating a new penalty for
 an old offence, that conviction must be according to the course
 of the common law, *i. e.* by the verdict of a jury, if not other-
 wise given by statute. And this being a case of felony, it must
 be by the indictment of the grand jury, and afterwards the ver-
 dict of the petty jury.

17. Justices who make passes, are at the same time with the Justice to certify
 to cause to be delivered to the constable, &c. appointed to manner of con-
 vey him or her, a note or certificate, ascertaining how he, &c. veyance.
 to be conveyed, by horse, cart, or on foot, and what allow-
 ance

ance such constable, &c. is to have, for conveying, in the form or to the effect following :

The Form of the Certificate for the Manner of Passing, &c.

Certificate for conveying of rogues.

18. **W** Hereas by a pass (reciting the substance or effect of the said pass) I (or we) do hereby order and direct the said person or persons to be conveyed on foot (or in a cart, or horse, &c.) to the said town or parish of _____ or other place (describing it) in the way _____ such parish, town or place (as the case shall be) in _____ time, for which the said constable, &c. is to be allowed the sum _____ and no more. Given under my hand (or hands) this _____ day, &c.

Constable how to convey.

19. The constable, &c. who receives the pass and certificate is to convey, or cause to be, &c. the persons named in the pass in such manner and time as by the pass directed, the next direct way to the place where they were ordered to be sent, if in the county, &c. where the person was apprehended. But where the place, to which the person apprehended is to be sent, lies in some other county, &c. he shall deliver the said person to the constable, &c. of the first town, &c. in the next county, &c. the direct way to the place to which such person is to be conveyed, together with the pass and duplicate of examination, taking his receipt for the same; and such constable, &c. shall without delay, apply to some justice, &c. who shall make a like certificate, *mutatis mutandis*, and deliver it to the constable, &c. who is with all speed to convey the person unto the first parish, &c. in the next county, &c. in the direct way to the place to which such person is to be conveyed; and so in like manner from one county, &c. to another, till they come to the place to which such person is sent; and the constable, &c. who shall deliver such person to the churchwardens, &c. ordered to receive him by such pass, and shall at the same time deliver them the pass, with the duplicate of examination, taking their receipt for the same; and if the churchwardens, &c. shall think the examination false, they may carry the person so sent before a justice who, if he see cause, may commit such person to the house of correction till next quarter-sessions; and the justices there, if they see cause, may deal with him as an incorrigible rogue; the person so sent shall not be removed from the place to which sent, but by order of two justices, as in case of other poor.

20. Any justice before whom a vagrant is carried, may order him to be searched, and his bundles inspected by the constable, &c. in the presence of the justice; and if such vagrants be found where

therewithal to pay for their passage either in the whole or in part, the justice shall order so much of the money to be paid, or other effects to be sold, towards the expence, returning the overplus, (if any) deducting charges of sale.

21. The constable, &c. of any parish, &c. in *Cumberland*, *Northumberland*, *Durham*, or town of *Berwick upon Tweed*, upon any person's being delivered to them by a pass and examination, who was apprehended within the said counties or town, or brought to them according to the direction of this act, whose place of legal settlement is in *Scotland*, are to deliver the examination to the clerk of the peace, to be kept among the records, and to convey, &c. such person, &c. into the next adjoining shire in *Scotland*, and deliver him to some constable, &c. of the next parish, taking his receipt for him. This officer is to receive the person, give the receipt, and dispose of him according to law.

Passing from the four northern counties into Scotland.

22. If any such vagrant, (as in *sect. 21.*) after being so sent into *Scotland*, shall be found wandering, begging, or misbehaving himself in *England*, he shall be punished as an incorrigible rogue.

23. In the present act a clause is omitted which was in the former, to punish masters of ships who import rogues from abroad.

24. Every master of a vessel bound for *Ireland*, the isle of *Man*, *Jersey*, *Guernsey*, or *Scilly*, is upon warrant to him directed by a justice, &c. where the ship lies, to take on board the same such vagrants as are named and expressed in the warrant, and convey them to such place in *Ireland*, &c. as the ship is bound to, or shall arrive at; the constable who serves him with the warrant, is to pay him for charges such rate *per head*, as the justices at sessions from time to time appoint. The master is, on the back of the warrant, to sign a receipt for the money paid, and the vagrants so brought and delivered to him; the warrant thus indorsed is to be produced to the same justice, and upon his allowance under his hand, the money to be repaid by the county, as, by this act, money for conveying vagrants. Masters neglecting or refusing to receive on board, or transport such vagrant, or to indorse or sign such receipt, forfeit 5 *l.* to the use of the poor of the parish, to be levied by distress and sale of the ship or goods, &c. returning the overplus on demand, after penalty and charges of levying the same, provided no master be compelled to take on board more than one vagrant for every 20 tons burthen.

Masters of ships to carry rogues abroad.

Payment.

Penalty on refusal.

25. Justices at sessions are, from time to time, to appoint what allowance *per mile*, &c. shall be made for passing, &c. rogues, &c. and may make other orders, &c. to be observed by all justices, constables, &c.

Allowance for passing, how settled.

26. If

Payments how
allowed, and car-
ried forward.

Pena y on high
constable for
non-payment.

Treasurers to pay
money expended.

Counterfeiting
or altering re-
ceipt, &c.

Not conveying.

Forfeitures how
levied.

See sect. 31.

Parishes to set
persons on
work.

Lunaticks.

26. If a petty constable, or other such officer of a parish, &c. bring to a high or chief constable such certificate, given him by a justice of the proper county, &c. ascertaining how, and for what rates or allowances he is required to convey any rogues, &c. together with a receipt or note from any constable, &c. to whom the person so to be conveyed was delivered, the high constable must pay to such officer the rates or allowances ascertained in and by such certificate, and no more, taking from him such certificate, and his receipt for the same; to be allowed the same on passing his accounts, upon delivering up the certificate and receipt, and giving his own receipt to the treasurer; and the justices at sessions are to allow it to the treasurer *ut supra*. If a high constable refuse to pay, &c. on demand, any justice by warrant, &c. may levy double the sum ascertained by certificate, by distress and sale, &c. and thereout allow the petty constable, &c. the sum ascertained in and by certificate and receipt, and such other recompence for his trouble, loss of time and expences, as the justice thinks fit; the overplus, if any, to be returned to the high constable on demand. In cities, &c. where there is no high constable, the petty constables are to have like allowance.

27. Or if any governor, &c. of a house of correction shall deliver such certificate and receipt to any treasurer, he shall pay the rates therein to such governor, taking his receipt for the same, which shall be allowed the treasurer in his accounts.

28. If any petty constable, &c. or governor, &c. counterfeit such certificate, receipt or note, or make, or knowingly permit to be made, any alteration in it, he forfeits fifty pounds. And if he do not actually convey, or cause to be, &c. the person, &c. or do not deliver to the proper person, or if any constable, &c. refuses to receive such person sent to them, or to give a receipt or note *ut supra*, such officer, &c. forfeits 20*l*. The forfeitures to be levied by distress and sale, &c. by warrant or order of justices in sessions; a moiety to the first informer, the other moiety to the treasurer, to be applied as part of the publick stock; the overplus (after charges) to the officer on demand. I conceive the conviction is to be by a jury upon an indictment, the act being silent as to that matter.

29. Parishes, &c. are to take care to employ in work, or place in some work house or alms-house, persons, &c. conveyed to them by pass until they betake themselves to some service or other employment; and if they refuse to work, or betake themselves, &c. overseers of the poor of the same parish may cause him to be carried before a justice, in order to be sent to the house of correction, there to be kept to hard labour.

30. Where there is any person, who by lunacy, or otherwise, is furiously mad, or so disordered in his senses, that he may be dangerous to be permitted to go abroad, two justices by warrant directed to constables, churchwardens and overseers, &c. or some

me of them, may cause him to be apprehended, and kept
sely locked up in some secure place within the county, &c. as
they appoint; and if they find it necessary, to be there chained,
his last legal settlement was in any parish, &c. within the
county, &c. and if the settlement be not there, then to be sent
the place of last legal settlement by a pass, and be locked up
chained. The charges of removing, keeping, maintaining
and curing, during such restraint (which shall be for such time
as such lunacy continues) shall be paid (being first proved
on oath) by order of two justices, directing the churchwardens
overseers where any goods or lands of such persons are, to
seize and sell so much of the goods and chattels, or receive so
much of the annual rents of the lands and tenements as is neces-
sary to pay the same, and to account at next quarter-sessions;
if such person has not an estate to pay and satisfy the same,
over and above what shall be sufficient to maintain his or her
family, then to be satisfied and paid as the poor, &c. are pro-
vided for. But this act is not to abridge the king's prerogative,
power of the lord chancellor, &c. or of *Lancaster*, or of
Wester, concerning lunatics, or to prevent any friend of such
lunatics from taking them under their own care.

31. If any constable, &c. or governor, &c. be defective, re- Constables, &c.
is or negligent in his duty in the execution of this act in any neglecting duty.
for which no punishment is therein before particularly pro-
vided; or if any person disturbs or hinders the execution of this
act; or rescues any person apprehended or passing from place to
place by virtue thereof, or be advising, aiding or assisting to his
escape, on conviction by oath of one credible witness before one
justice, &c. where, &c. (which oath he may administer) he for- See sect. 28.
feits for each offence a sum not exceeding five pounds, nor less
than ten shillings, to the use of the poor of the parish, &c.
where the offence, &c. to be levied by distress, &c. by warrant
from such justice, returning the overplus, &c. upon demand af-
ter forfeiture and charges; if no sufficient distress, such justice
may commit to the house of correction to hard labour, not ex-
ceeding two months.

32. Persons who knowingly permit rogue, vagabond, or in- Permitting
trigible rogue to lodge, or take shelter in their house, barn, rogues to shel-
ter, &c.
other out-house or building, and do not apprehend and carry
the rogue, &c. before some justice, or give notice to a con-
stable, &c. so to do, on lawful conviction by confession, or oath
of one credible witness before two justices, &c. where, &c. for-
feits a sum not exceeding 40 s. nor under 10 s. a moiety to the in- Penalty.
former, the other to the use of the poor, &c. to be levied by
distress, &c. by warrant from such justices, returning the over-
plus, &c. and if any charge be brought upon a parish, &c. by And charges
means of such offence, it shall be levied on the offender's goods,
&c. and for want of distress, commitment by such justices to the
house

house of correction, &c. not exceeding one month. *Note*; Before this act, *viz.* *Trin. 1 Ann.* it was resolved, that an indictment did not lie for entertaining vagrants, says the book, judgment was given for the defendant. 1. Because it was not found that they were vagrants at the time of the entertainment by the defendant. 2. Because the entertainment of them, *viz.* the giving them meat, drink and lodging is not any offence within 39 *Elix. c. 4.* *Regina v. Langley*, 2 *Ld. Raym.* 790.

33. If any child above the age of seven years, found with a person offending against this act, be committed to the house of correction as aforesaid, the justices at quarter-sessions, if they see convenient, may order such child to be placed out as a servant or apprentice till the age of twenty-one years, or for a less time. And if any offender found with such child, be again found with the same child, (which was so placed out) offending against this act, such offender shall be deemed an incorrigible rogue. Where a woman wandering and begging is delivered of a child in a parish, &c. to which she does not belong, whereby she becomes chargeable, the churchwardens, &c. may detain her in their custody until they can safely convey her to a justice, who shall examine her, and commit her to the house of correction until next general or quarter-sessions, who may (if they see convenient) order her to be publicly whipped, and detained in the house of correction for any further time, not exceeding six months; and upon application by churchwardens or overseers of the place where she was so delivered, the justices at such sessions shall order the treasurer, &c. to pay a sum, as a reasonable satisfaction for the charges such place has been put to on such woman's account. And if such woman be detained and conveyed to a justice as aforesaid, the child, &c. if a bastard, shall not be settled in the place where so born, nor be sent thither for want of other settlement by a pass, by virtue of this act; but the settlement of such woman shall be deemed the settlement of such child.

Bastard, where
to be sent.

Appeal.

Proviso for
cities, &c.
having special
acts, &c.

34. Persons may appeal from any act of justices, &c. to the next general and quarter sessions, giving reasonable notice.

35. In cities, &c. where special acts of parliament direct the charge of passing vagrants in another manner, or the apprehending and conveying them by other persons, those acts shall continue to be executed. And if any person be delivered to a beadle or constable, within the city and liberties of the city of London to be conveyed on as directed by this act, the said beadle, &c. shall not deliver such person in any other precinct within the said city, &c. but in the next.

36. Where persons offending against this act have been committed to the house of correction, there to remain until the next general or quarter sessions, if, upon their examination, no place can be found to which they may be sent by a pass, the justices shall at sessions order them to be detained and employed in the

house of correction until they can provide for themselves, or until the justices at general or quarter sessions can place them out to some lawful calling, &c. within the realm or plantations in America, &c.

37. This act is not to prejudice the heirs or assigns of *John Sutton*, late of *Cheshire*, esq; deceased, &c. This is a confirmation of a grant to them to license strolling fidlers of *Chester*.

38. This act is to commence from the first of *June 1744*, and from that time repeals the statute of vagabonds of 17 *Geo. 2.* and all the acts therein mentioned to be repealed, are hereby declared to be repealed, and continue repealed. For the rest of this statute 17 *Geo. 2.* see chap. XLII. sect. 6, &c.

39. Note; the act 39 *Eliz. c. 4.* for punishing rogues and vagabonds, and the act 1 *Jac. 1. c. 7.* for the continuance and explanation of the same, and so much of another act made 7 *Jac. c. 4.* for the execution of divers laws and statutes heretofore made against rogues, vagabonds, &c. as relate to the privy search hereby directed to be made, shall be and are repealed by 12 *Ann. c. 23.* which, to this purpose only, was confirmed by stat. 13 *G. 2.*

40. By statute 6 *Geo. 1. c. 19.* the justices of peace within 6 *Geo. 1. c. 19.* their respective jurisdictions may commit vagrants, and other criminal persons charged with small offences, either to the common gaol or house of correction, as they in their judgment shall think proper.

41. N. B. Upon stat. 12 *Ann. c. 23. §. 4.* one justice could not make an order to send a vagrant to the place of his last legal settlement, though one justice might make a pass to pass him as a vagrant. *Inhabitants of Bamber versus Inhabitants of Haddington*, 2 *Ld. Raym.* 1360. But this is now otherwise, the said act of queen *Anne* being repealed, and the new act *supra* having given that power to one justice.

42. This is a short abstract of all the laws now in being relating to both the sorts of poor: What I have further to add about the poor may be ranged in alphabetical order under the following heads, *viz.*

Alms.

Appeals.

Apprentices.

Bastards.

Beggars.

Certificates.

Cottages.

Families left on parishes.

Houses of correction.

Licences.

Maintenance of poor.

Orders of justices.

Overseers of the poor.

Parishes and parishioners.

Penalties and forfeitures to the poor.

Poor prisoners.

Rates and assessments.

Removals.

Servants.

Settlements.

Testimonials.

Trades for employing poor.

Vagrants.

Workhouses.

C H A P. XXXIV.

Alms.

1. **A**ND first as to alms, none may be suffered to ask relief at any man's door, though within his own parish, unless it be by order of the overseers: Neither may any be suffered to beg by the highway, though in their own parish. *Dalb. c. 73. p. 227.*

2. If a man gives alms at his door, unless to such poor who are licensed to beg by the overseers, he forfeits 10s.

Any person may relieve the poor privately, but parish poor must be registred.

3. All persons may relieve any poor they think fit by private alms; but to intitle any to the relief of the parish, their names must be registered once a year in the parish books, unless authorized by warrant under the hand and seal of a justice of peace of the parish; or in case there be none there, by the next justice, or by order of sessions, except in cases of pestilential diseases, the plague, or small-pox. *3 & 4 W. & M. c. 11.*

And wear a badge, &c.

4. Every person receiving relief, and their wives and children, shall, upon the right sleeve of their uppermost garment wear the badge of a Roman P. and the first letter of the name of their parish; and officer relieving any not wearing such badge forfeits 20s. *8 & 9 W. 3. c. 30.*

No justice to order relief till oath made.

5. No justice of peace shall order relief to any poor person until oath made before him of reasonable cause, and that the person had applied to the parishioners at some vestry, or public meeting, or two of the overseers of the poor of the parish, and was by them refused to be relieved; and until the justice hath summoned the overseers, to shew cause why relief should not be given. *9 Geo. 1. c. 7.*

A Justice's Warrant to relieve a poor Person, according to the *Stat. 9 Geo. 1. c. 7.*

To the churchwardens and overseers of the poor of the parish of, &c. in the county of, &c.

9 G. 1. c. 7.

6. Midd. **W** Hereas A. B. of your parish hath made oath before me, Sir T. C. baronet, one of his majesty's justices of the peace for the county of, &c. that he is very poor and impotent, and utterly unable to provide for himself and family, that they must inevitably perish, unless timely relieved; and that he the said A. B. on, &c. past, applied himself to the parishioners of your parish at a publick meeting, as the law directs, and was

by them refused relief; and whereas I have summoned you the overseers of the poor of the said parish, to shew cause why relief should not be given to the said A. B. but you have not made any sufficient cause appear: These are therefore in his majesty's name to command you to pay unto the said A. B. the sum of 2 s. per week, for and towards the support and maintenance of the said A. B. and his family, until such time as he the said A. B. shall be better able to provide for the same, or that you shall be otherwise ordered to for-
bear the said allowance. Given, &c.

7. In every parish is to be kept a book or books, wherein the names of all persons, who do or may receive collection, shall be registered, with the time when, and the occasion of their relief, as long as the cause for relief continues, which books yearly at Easter week, or as often as it shall be thought convenient, are to be produced and examined by the parishioners, and a new list made of persons proper to be relieved, as they shall think fit; and no officer of any parish (except upon emergent occasions) shall bring to the parish account any money he shall give to poor persons not registered, on pain of forfeiting 5 l. leviable by distress, by warrant of two justices, for the use of the poor of the parish. 9 Geo. i. c. 7.

Register of the Poor must be kept in every parish, &c.

C H A P. XXXV.

Apprentices.

THIS is a large head, and much might be said about it, but I shall confine myself within the bounds intended by this treatise, and enlarge no farther on it, than as it relates to parish-officers, &c. and therefore I shall not mention the qualifications required by 5 El. c. 4. enabling persons to take apprentices, nor of the certificate of three justices of the county where the estate lies; because those certificates are now, and have been for some time, wholly disused; neither is there regard had to the ability of the parents, whose children are bound to any trade whatever; and the clause, that woollen weavers shall not take apprentices, unless father or mother have been a year, is expressly repealed by stat. 5 & 6 W. 3. c. 9.

2. Upon householders complaint to a justice, the children of parents not able to keep and maintain them, the overseers of the poor, by the assent of two justices, may put out to be apprentices; (*viz.*) the men-children till the age of 24, and the women-children till the age of 21 years, or marriage; and all

Boys may be bound apprentices till 24, girls till 21.

M

such

such children of the age of seven years, or above, so bound apprentices, shall be taken and kept as apprentices by their masters. *Stat. 43 El. c. 2.*

Justices may compel persons to take apprentices.

3. One justice of peace may compel any person fit to be bound as an apprentice; and as the statute enableth the churchwardens and overseers (with the consent of two justices of peace) to put out apprentices, so it doth enable them to place those apprentices with their masters: And the said justices may compel all such as are of ability to take such apprentices, according to their discretion.

Who are bound to take apprentices.

4. Every man who by his calling and profession, or manner of living, entertaineth and must have use of other servants, as knights, gentlemen, clergymen, yeomen, &c. must entertain such apprentices: And the churchwardens, and overseers (with the consent of the justices) may impose upon masters refusing to take such apprentices, a competent sum of money for the placing them out elsewhere; and upon the master's refusal to pay such money, two justices may make their warrant to levy the same by distress and sale of the offender's goods. But by *stat. 8 & W. 3. c. 30.* if a churchwarden maketh oath before two justices of peace, that a master refuses a poor apprentice, such master shall forfeit 10*l.* to be levied by warrant of the said justices, and distress thereupon, for the use of the poor: But if the master aggrieved thereby, he may appeal to the next sessions, whose order is final.

Law case for refusing to take an apprentice.

5. Before this *stat. Hill. 29 & 30 Car. 2.* upon indictment against a person for refusing to accept an apprentice bound by the churchwardens and justices of peace according to 43 *El. c. 2.* it was resolved, that a man might not be compelled to accept an apprentice, for such may be a thief, spy on his family, enemy, &c. *Vent. Rep. 325.* but 1 *Keb. Rep. 431. e contra*, in the case of *The King against Fairfax*, 1 *W. & M.* it was resolved by *Dolben, Gregory and Eyres*, justices, (against the opinion of *Holt* ch. just.) that justices of peace have a power to compel householders to take poor children apprentices. But the order was quash'd in this case, because it was made originally at the sessions, whereas it ought to have come thither by appeal. *Com. 164, 165, 166. (Carth. 94. 3 Mod. 269. 1 Show. 76)* the book at large, and see *Comb. 289.* the first point allowed by *Holt*, ch. just. to be settled; and there it is also held that it need not be said that the two justices live in or near the place; for, to this, the statute is but directory, and it need not be averred that the parents were not able to maintain the child; for churchwardens and overseers have this in their discretion.

It is not necessary for parish officers to give money with them.

6. Justices in sessions may place apprentices to masters out of the parish or hundred, where fit masters are not to be found in such parish, &c. but churchwardens may not place them to masters in another parish. There is no necessity of giving money

with such apprentices, for 'tis said to be discretionary in the churchwardens and overseers, whether they will give any or not, on considering the circumstances of age and ability. If money be given, it must be raised by the overseers by a tax on the inhabitants.

7. Masters receiving money given by charitably disposed persons for placing out poor apprentices, must give security to repay the same at the end of seven years, or within one year after the death of the apprentice, if he die within that time. *Stat. 7 Jac. 1. c. 3.* It seems reasonable if a master, who is bound to keep an apprentice, turns him out, whereby he is likely to become chargeable to the parish, upon complaint of the churchwardens, the justices may order the master to take him again; and it seems that the remedy must be by indictment. *Comb. 405.*

8. A poor child bound apprentice, cannot legally be assigned to another master; but if he be assigned, and actually serves the second master, he will gain a settlement where the second master lives. *Salk. 68. Inhabitants of Castor and Aicles.* But in the city of London, by the custom, such an assignment is good.

Apprentices cannot be legally assigned.

9. A lessee for years of a farm taketh an apprentice, and the term expires before the apprenticeship is ended, he must go with the farm, if the master will permit him; but where a man taketh an apprentice by reason of his ability, and the master dies before the determination of the apprenticeship, such apprentice shall go to the executor or administrator, if he hath assets, and if none, then he must return to the parish where last settled. *Show. Rep. 405.*

When master dies, to whom the apprentice must go.

10. By *stat. 7 Jac. 1. c. 3.* it is enacted, that any person of the age of 10 years may be bound apprentice by his own agreement only by indenture, &c. and if he be above 12, he may be compelled by a justice; but persons above 15 years of age may not be compelled, they must work, or go to service, or be sent to the house of correction, or else be bound over to the sessions to their good behaviour.

11. An information was brought on *stat. 5 El. c. 4.* for detaining an apprentice in husbandry, being bound till 21, and for departing without a testimonial; two judges were of opinion it would not lie, because the statute doth not extend to provide against the departure of an apprentice by indenture, but an hired servant. *Hetley 164.*

Cases about apprentices.

12. If an apprentice in husbandry doth not perform his duty, the master may complain to one justice, whose business it is to reconcile them, if he can; but if he cannot, then the justice may send him to the house of correction, or, more regularly and safely, may bind him over to the sessions, and from thence he may be sent to the house of correction.

13. Apprentice assaulting his master may be sent to the house of correction, and a master may justify striking his apprentice.

The sessions, in this case, have only an additional power, viz. to discharge or punish, if one justice cannot compose the difference; and therefore application ought first to be made to him. If the fault be found in the master, then the justice may bind him over to the sessions, and four justices there may discharge the apprentice, which discharge is to be inrolled by the clerk of the peace. The discharge must be under their several hands and seals; and therefore where the four justices subscribed their names, and there was but one seal, the order was quashed. *1 Ann. B. R.*

14. The master and apprentice may agree to leave each other, and, in such case, the master may give leave under his hand to depart, and then one justice, out of sessions, may discharge him, by allowing the cause of putting him away. But because he cannot be made an apprentice without writing, therefore he cannot be discharged but by writing under the hand of the master.

15. Not allowing meat, drink or wages agreed on, this is a good cause to be allowed by the justice, and so is beating him unreasonably. *F. N. B. 168.*

16. Any departing from his service whatsoever, refusing to do any reasonable service, is a departure in law; but as to that part of the act which says, an apprentice departing without a testimonial, shall be whipt as a vagabond, it must be an apprentice in husbandry, and one of full age; for, otherwise, an infant, who is the son of a gentleman, may happen to be punished as a rogue. *Winch 25.*

17. *N. B.* That if the master should put his apprentice into apparel, it is a gift in law, and he cannot after take it away, though he should part with his apprentice. *Dalt. 153.*

18. The sessions have nothing to do concerning an apprentice, before it comes before a private justice. *1 Mod. 287.* But see the following case, an order to discharge an apprentice may be originally made at sessions; and the justices may order money to be returned. *The King versus Johnson, 1 Salk. 68.*

19. Every one bound an apprentice according to the statute *5 El. c. 4.* tho' under age, yet is compellable to serve his time out, as if he were of age when he was bound, but that is to be understood of a compulsion by the means prescribed by that statute; for the covenant is not good so as to enable the master to bring an action upon it, as was resolved *Cro. Car. 179. Gilbert con. Fletcher.*

20. If any servant or apprentice shall unlawfully depart, or fly into any other shire, the justice, &c. may grant writs of *capias* to the sheriff or other officer whither the servant is gone, to take his body, returnable before them, &c. who shall imprison the offender till he find surety to serve his master again. *5 El. c. 4.*

Cases of apprentices.

21. A master cannot send an apprentice beyond the seas, (except he go with him) but may send him to any place in *England*. *Bulst.* 164. *Brown's case*. Action of account is not maintainable against an apprentice. *Brownl.* 67. By custom of *London*, a man may turn over his apprentice to another within the city. *Goldsb.* 161. Action lies by a master, for enticing an apprentice to depart from his service; so if enticed to take money or play. *March* 3. *Noy* 105.

22. 'Tis doubted whether the quarter-sessions can discharge Cases about apprentices, an indenture of apprenticeship, where the apprentice was not imposed upon the master by the justices, and compelled to serve.

Vent. 147. A bond given by an apprentice to deliver up a just and true account, is not within the clause of *stat. 5 El. c. 4.* but agreed by all the court to be a good bond, being for a collateral matter. *Pasch.* 4 *Jac.* 1. *Bulst.* 3. pl. 179. *Bennet* cont. *Belfield*. An order made at the quarter-sessions at *Gloucester*, was removed into *B. R.* confirming another made by the justices there, for placing a poor boy to be an apprentice in husbandry, was quashed, because the churchwardens were not mentioned in the order. *Mich.* 1 *W. & M.* 3 *Mod.* 269, 270, 271. *The King* cont. *Fairfax*.

23. The assignment of an apprentice, even though with his consent will not make him an apprentice to the assignee within *El. c. 4.* *Trin.* 27 *Car.* 2. *B. R.* *Keble's Rep.* 519. *The King* contra *Chanrel*; but in *London*, by the custom, it is otherwise.

24. Justices of peace have consueance of apprentices bound by indentures, or otherwise, as well by private persons, as by the overseers of the poor. *Pasch.* 13 *Car.* 2. 1 *Keb.* 6. The justices of peace have the same power of discharging apprentices, upon complaint of the master against the apprentice, as upon complaint of the apprentice against the master. *Mich.* 21 *Car.* *Saunders* 315. *Hawksworth* and *Hillary*, *Trin.* 29 *Car.* *B. C.* 7 *Mod.* 286. *Watkins* cont. *Edwards*. Clergymen are not exempted from taking apprentices. The justices may charge an apprentice, and order a restitution of the money; and if the master is not bound to appear at the sessions, yet they may proceed to make an order against him. Justices of peace at their sessions have not jurisdiction to take an indictment upon *stat. 5 El. c. 4.* for using a trade, not having served as an apprentice for seven years. *The Queen* versus *Taylor*, 2 *Ld. Raym.* 7. They may discharge an apprentice who was bound to a man of *London* before the chamberlain, if he lies out of the city, and serves his master out of it; for, in such case there can be no proceedings against him before the chamberlain; otherwise if the service be in *London*, for their liberties, &c. are expressly saved by *stat. 5 El. c. 4. sect. 40.* *The King* versus *Colbourne*, 2 *Ld. Raym.* 1410.

25. Indictment, for that a poor boy being put out apprentice pursuant to the statute, the master refused to provide for him; and this was held good since the statute of 8 & 9 W. 3. cap. 30. 3 Ann. B. R. Indictment will not lie for enticing away a man's apprentice.

26. Persons coming into any parish by certificate, and taking apprentices by indentures, such apprenticeship shall not make a legal settlement in such parish (unless such master had gained a legal settlement in the said parish after certificate given); but such apprentice shall have the settlement in such parish, &c. as if he had not been bound apprentice, &c. It shall be adjudged a good settlement, if an unmarried person, having no child or children, be bound apprentice for above a year, though no notice, &c. unless in case of a certificate, as above.

27. Note; In discharging apprentices, the practice now is for one justice to bind over the master, at the complaint of the apprentice, to the next sessions, and then four justices to discharge under their hands and seals, and, upon complaint of the master against the apprentice, to send the apprentice to the house of correction, if he will not agree to appear at the sessions, and at the sessions such order is to be made under the hands and seals of four justices, as is just. Four justices at a private sessions had discharged an apprentice, and after, at a general sessions, the justices, finding their mistake, set that order aside; and now when they come into the King's Bench, and move to have the order of the general sessions set aside, for that the first order was according to law; but the court denied it, and said, that an apprentice could not be discharged but by a general sessions, according to 5 Eliz. c. 5. Skin. 98. Anonymous.

28. If the indenture of an apprentice in London, by the default of the master, be not inrolled within a year, the apprentice may sue out his indenture, and shall be discharged; but if it be the default of the apprentice, as if he will not come before the chamberlain of London to have it done, there he shall not be discharged. 1 Roll's Rep. 205. Palm. 361.

29. One J. S. is bound apprentice to J. P. of St. John's parish; J. P. having a small house, the father was to find meat, drink, washing and lodging, the master allowing 2s 6d. a week. The apprentice never lodged with his master at St. John's parish, but in another parish; held, the apprentice gained no settlement in St. John's parish by virtue of the apprenticeship with his master, in regard he never lodged in the parish for the space of forty days. The foregoing case seems to be the same reported by lord Raymond, by the name of *Inhab. St. John Baptist* in the *Devizes v. Inhab. St. James in Bishops Cannings*, where *Warren* was bound by his father apprentice to J. S. who lived at St. John Baptist's, by indenture for seven years; *Warren* never lay one night in St. John Baptist's, but worked there, and

might lay at his father's in *Bishop's Cannings*, his father all that time finding him meat and drink (except fair days, market-days and *Saturdays*, when he eat with his master) and washing and lodging, according to his covenant in the indenture of apprenticeship. *Fortescue* and *Raymond* (*Pratt* absent, and *Powys* doubting) quashed an order of sessions which had sent him back to *St. John Baptist's*, because binding an apprentice and serving will not make a settlement; but the settlement must be by inhabiting, which cannot be but where the party lodges. 2 *Ld. Raym.* 1371. The like resolution was between the king and the inhabitants of *Cirencester*. *A.* bound an apprentice to a butcher in *Cirencester*, lived with his father for the first six years, and then came and lived with his master up and down for three quarters of a year. *Object.* Not appear he lived 40 days with his master. *Curia:* It is set forth, he was up and down for three quarters of a year with his master; so room to intend he was resident 40 days. A poor boy being bound apprentice in *L.* his master assigned him to *W. R.* who lived in *N.* in another parish; adjudged, that he gained a settlement where his second master lived; for though an apprentice is not assignable, yet the assignment is not void, but shall amount to a contract between the masters, that the apprentice shall serve his last master; and it is good by way of covenant, though not to pass an interest. *Trin.* 3 *G.* 1. *Mod. Caf.* 190. The son was bound apprentice to his father, who was a poor man, and afterwards he gave up the indentures of apprenticeship, and the son hired himself into another parish for a year, and served out the whole year, but the indentures were not cancelled; and thereupon an order was made to send him to the parish where he was an apprentice, for he still continued so, because the indentures were not cancelled. An apprentice who served two years in one parish, was by a verbal agreement turned over to another master in another parish, and there served five years; it is a good settlement in the last parish, and is a continuance of his first apprenticeship. *Mod. Ca. in Law and Eq.* 168, 169. between parishes of *St. Olave* and *Allhallows on the Wall*, and parishes of *St. Leonard Shore-ditch* and *Trinity* parish. The children are settled where the father is settled, and the father had gained a settlement in *A.* by serving an apprenticeship in *A.* tho' he dieted and lodged by agreement in *B.* *Mod. Ca. in Law and Eq.* 285. *The King ver. Parishioners of St. John.* A master broke after his apprentice had served two years; the apprentice by his master's leave, hired for, and served a year in another parish, this gains no settlement in the latter parish, because the indenture was not discharged. *Mod. Ca. in Law and Eq.* 235, 236. between the parishes of *Buckington* and *Sewington*. But this case is otherwise reported by lord *Raymond*, viz. *Richard Allen* was bound an apprentice to *J. S.* in *Buckington*, and served him in that parish six months;

months; J. S. then broke, and R. Allen, without direction or consent of J. S. let himself as a servant to J. N. who lived in St. Michael Sebington, and served him there two years: Afterwards J. S. delivered unto R. Allen his indenture of apprenticeship. Court of B. R. was unanimous, that Allen gained no settlement by his service at Sebington, he having let himself without his master's consent, and the failure of the master did not determine the apprenticeship; and the master's subsequent delivering up of the indenture, shall not make good his letting himself, so as to gain a settlement; he is therefore settled in Buckingham, where he served his master above forty days. *Inhab. Buckingham v. Inhab. St. Michael Sebington in Somersetshire*, 1 Ld. Raym. 1352. The justices cannot annul a contract between master and servant, under colour that the servant is a poor person. *Farrington and Witty parish*, 2 Salk. 527, 528. *Farrington and Wilcot*, 529. An apprentice gains a settlement by his service, though his master is only a lodger. *St. Bride's and St. Saviour's parish*, 2 Salk. 533. Where a certificate man takes an apprentice who serves out his time, and the master becomes chargeable, the apprentice cannot be sent back along with him, though his children born there shall, by the express words of the stat. 8 & 9 W. 3. c. 30. *Cases 2. Anne* 204, 205. The like if he serves a lodger; but bare binding an apprentice is not a settlement, unless he serve forty days. *Ibid.* 206. Serving seven years to a trade without an indenture, is a good service as an apprentice, within the stat. 5 El. Comb. 254, 255. See *quære* what alteration is made by the stamp acts: If by indentures not duly stamped, no settlement is gained. *Hil. 4 G. 2.* Between the parishes of *Cuerden* and *Laland*. Et vide *Andrew's Reports* 362, &c.

30. A poor person is bound an apprentice voluntarily to a person of the parish of *Newbury*, no justices hands being put to the indenture; the sessions held it no settlement for want of it. *Curia-econtra*: The statute only extends where a poor child is put out in a compulsory way; but here it is by consent, and so the statute does not extend to it. A person is bound apprentice to a cobbler who lives in one parish, and his stall in another. The apprentice lived with his father in a third; and held *per curiam*, he gained no settlement as an apprentice. One *Goulston*, apprentice to a seafaring man, who lived in the parish of *St. Olave's Jewry*; the apprentice lived with his master three months, but always lodged on shipboard out of the parish; it did not appear that he was sent by his master to watch on shipboard; if he had, it had been carrying on his master's business, and continuing in his service, and doing his duty. The court adjudged he was not settled in the parish. There must not only be an apprenticeship, but residency, and a man is deemed to be resident, where he lodges. The discharge must be inrolled by the

ap. 35.

clerk of the peace, or town clerk, which will be good against master, his executors and administrators. A pauper was and apprentice by indenture to a weaver at *Utoxeter*, who had him 9 l. 10 s. (parish money) but he had no stock or work employ the apprentice in. One of the indentures was sealed delivered by the master, and the other by J. S. overseer of parish of *Woolstanton*, and the indentures were allowed and confirmed by two justices of the peace, but the boy was no party to, and they were stamped with one sixpenny stamp only; the apprentice was a cripple from his birth, and not capable of doing any business; and was carried to his master on a horse be- hind his grandmother against his consent: And he lived six or seven months with his master, who then absconded. An order of justices, which had been made for removing the pauper from *Woolstanton* to *Utoxeter*, was quashed upon an appeal at sessions because the indentures were stamped with one sixpenny stamp only; the order of sessions stating the fact as above, was afterwards confirmed by the court of King's Bench, because it did appear that one of the justices who allowed and confirmed the indentures was of the *quorum*. *Easter-Term 1738*. The cases of *Woolstanton* and *Utoxeter*, *Andrew's Rep.* 362, 371.

1. Two or more justices of peace in their counties, ridings or divisions; as also all mayors, and other chief officers of any corporation; and likewise the churchwardens and overseers of the poor for the time being, of each parish, by and with the consent and approbation of such justices or chief magistrates, may bind and put out any boy or boys of the age of ten years, upwards, who are chargeable, or whose parents are chargeable to the parish wherein they inhabit, or who beg for alms, to apprentices to the sea-service, to any of the king's subjects, or masters or owners of any ship or vessel used in the sea-service, and belonging to any port in *England, Wales or Berwick*, for so long time, and until such boys attain the age of 21 years; and such binding shall be as effectual in law, as if such boy was of full age, and had bound himself by indenture: And the age of every such boy shall be inserted in his indentures, being truly taken from a copy of the entry in the register-book, wherein the time of his being baptized is entred, (where the same can be had) which copy shall be given and attested by the minister, vicar, or curate of such parish, wherein his baptism is recorded, without fee or reward, and may be writ on parchment or paper without any stamp; and where no such entry can be found, two or more such justices, and such mayors, or other chief officers, shall, as fully as they can, inform themselves of the boy's age, and from such information shall insert the same in the indentures; and the same (in relation to the continuance of his service) shall be taken to be his true age without any further proof. *Stat. 2 & 3 Ann. cap. 6.*

Power to bind poor boys to the sea-service.

32. No master of a ship shall be obliged to take any such apprentice under the age of 13 years, or who shall not appear to be fitly qualified, both as to the health and strength of body for that service; and the widow, or executor, or administrator of such master shall have the same power of assigning over such apprentices to any other masters who have not their complements as is given to those who have taken apprentices under *stat. Eliz.* Note; this clause in 4 *Ann. cap. 19.* does not forbid an apprentice to be bound to such master under 13 years of age, unless the master is willing to receive him.

33. Churchwardens and overseers of the poor of the parish from whence such boy shall be so bound, shall pay down to the master, at the time of binding, 50s. for cloathing and bedding for sea-service, for such boy, to be allowed on their accounts. *Stat. 2 & 3 Ann. cap. 6.*

34. In large parishes, where overseers of the poor are chosen for townships or villages, they may execute this act. *Ibid.*

35. No such apprentice shall be compelled or impressed, or permitted, or suffered to list or enter himself in the king's service at sea, till he arrives to the age of 18 years. *Ibid. sect. 46, 50.*

36. The churchwardens and overseers shall send the said indentures to the collector of the customs at any port in the kingdom, to which such master or owner belongs, who shall cause to be entered in a book or books, to be kept for that purpose, from time to time, every such indenture, and shall make an indorsement thereon of the register thereof, subscribed by such collector, without fee or reward: And collector neglecting or refusing to enter and indorse, or making false entry, forfeits 100 pounds, for the use of the poor of the parish, from whence such boy was bound apprentice: And such collector, or his deputy, shall, from time to time, transmit certificates, in writing, under his hand, to the admiralty, containing the name and age of such apprentice, and to what ship he belongs; and upon receipt of such certificates, protection shall be made and given, from time to time, for such apprentice, till he attains the age of 18 years, without fee or stamp. *Ibid.*

37. Persons to whom parish boys are put apprentice by *43 El.* may, with consent and approbation of two or more justices of the county, dwelling in or near the parish where such poor boy was bound apprentice, or of the chief officer of the city, &c. at the request of the master or mistress, then living of such apprentice, or of their executors, administrators or assigns, by indenture, assign and turn over such poor boy apprentice to any master or owner of any such ship, for and during the then remaining time of his apprenticeship: Such indenture of assignment to be registered, and certificates given and transmitted by such collectors, as above, *sect. 36.* and protections till the age of 18, as aforesaid. *Ibid.*

38. Such apprentices, under the age of 18, are exempted from payment of 6 *d.* per month to *Greenwich-Hospital*, imposed by stat. 7 & 8 *W.* 3. for encouragement of seamen, &c. *Ibid.*

39. Masters and owners of vessels of 30 ton to 50 ton, are obliged to take one such apprentice, and one more for the next ton, and one more for each 100 ton above 100 ton; on refusal, to forfeit 10 *l.* for the use of the poor of the parish from whence such boy was bound apprentice. *Ibid.*

40. Every such master or owner, after his arrival into any port, and before he clears out, shall give an account in writing, under his hand, to the collector, of the names and number of such apprentices as are then remaining in his service.

41. Such apprentices shall be conveyed to the ports to which their masters belong, by the churchwardens and overseers of the parish, and their agents; the charges to be as in stat. 11 & 12 *3. cap.* 18. that is, to be ordered by the said justices, and to be paid forthwith by the chief constable of the division out of the *pol* and *Marshallsea* money. *Ibid.*

42. Counterparts of such indentures to be executed by such masters, shall be sealed and executed in the presence of, and attested by such collector, and constable or other officer who so conveys such apprentice; which last mentioned officers shall convey such counterparts to such churchwardens and overseers, in the same ways and means as such apprentice was conveyed.

43. Two or more justices, &c. and all mayors, and other head officers of any city, &c. in or near adjoining to such port to which such vessel shall arrive, have full power to inquire into, examine, hear and determine all complaints of hard and ill usage from masters to such apprentices, and also of all such as voluntarily put themselves apprentices to the sea-service, as aforesaid, and to make such orders therein, as now they are enabled by law to do in other cases between masters and apprentices. *Ibid.*

44. Every such collector shall keep a register, containing the number and burden of such ships, the names of masters or owners, and of such apprentices, and from what parishes or places they were sent; and shall transmit true copies signed by them to the quarter-sessions, or to such cities, &c. parishes or places, as often as reasonably required, without fee, or reward: And for every neglect or refusal, forfeit 5 *l.* for the use of the poor of the parish from whence such boy was bound apprentice. *Ibid.*

45. Every custom-house officer, at each port, shall insert, from time to time, at the time of their cockets, the number of men and boys on board the respective ships, at their going out of ports, particularly describing apprentices, by name, age, and date of indenture, without fee, &c. *Ibid.*

46. Persons

46. Persons who voluntarily, and of their own accord, bind themselves to such masters or owners, shall not be impressed in the sea-service, during three years, from the date of their indentures; which are to be registered, and certificates thereof given and transmitted by such collector, as aforesaid: Upon receipt of which certificates, protections shall be given without fee. *Ibid.* But see below, *sect.* 50.

47. When such apprentices are in the king's service their masters are intitled to their wages. *Ibid.*

48. All penalties and forfeitures by this act shall be levied by warrant under the hands and seals of two or more justices of the same county, city, &c. by distress and sale of offenders goods and chattels. *Ibid.*

49. No such master shall be obliged to take any such apprentice under the age of 13 years, or who shall not appear to be fitly qualified as to health and strength of body for that service; and the widow, executor or administrator of such master shall have such power to assign them to other masters who have need of their complement as is given by the said act to those who have taken apprentices, pursuant to stat. 43 *Eliz.* Stat 4 *Ann.* c. 19 *sect.* 16.

50. No person of 18 years of age shall have the protection (mentioned above, *sect.* 46.) who shall have been in any sea-service, before the time they bound themselves apprentices. *Ibid.*

51. Any apprentice or hired servant to a person who resides in any place by certificate, and not having afterwards gained a legal settlement in such place, such apprentice or servant, by virtue of such binding or service, shall not gain a settlement, but shall have their settlement in such place, as if they had not been so bound or hired. Stat. 12 *Ann.* stat. 1. cap. 18. *sect.* 2. And 31 *Geo.* 2. c. 11. by an act to amend 3 *W. & M.* c. 11. it is enacted, that no person who shall be bound apprentice by any deed, writing or contract, tho' not indented, being legally stamped, shall not be liable to be removed from the place where so bound, and residing 40 days by reason of such deed, writing or contract only.

An Indenture for placing out a poor Boy Apprentice.

52. **T**HIS indenture made, &c. between A. B. and C. D. churchwardens of the parish of, &c. in the county of, &c. and E. F. and G. H. overseers of the poor of the same parish, of the one part, and J. K. of, &c. of the other part, Witnesseth, that the said churchwardens and overseers, by and with the consent of two of his majesty's justices of the peace of the said county, whose names are hereunto subscribed (according to the form of the statute

Indenture made in the 43d year of the reign of queen Elizabeth) have put out and bound, and by these presents do put out and bind L. M. a child of the said parish, apprentice to the said J. K. with him himself and serve from the day of the date of these presents, until the said apprentice shall accomplish the age of 24 years, during all which term the said apprentice his said master faithfully shall serve in all lawful businesses, according to his power, wit and ability, and honestly, orderly and obediently in all things demean and behave himself towards his said master, and all his, during the said term; and the said J. K. for himself, his executors and administrators, doth covenant and grant to and with the said churchwardens and overseers, and every of them, and their and every of their successors for the time being, by these presents, that he the said J. K. the said apprentice in the trade of, &c. which he now followeth, shall and will teach and instruct, or cause to be well and sufficiently taught and instructed, and during all the term aforesaid, shall provide and allow unto the said apprentice, meet and competent and sufficient meat, drink and apparel, lodging, washing; and other things necessary and fit for an apprentice; and also shall and will so provide for the said apprentice, that he be not any charge to the said parish of, &c. or parishioners of the said parish; but of and from all charges shall save the said parish harmless and indemnified, during the said term; and at the end of the said term shall and will make, provide, allow and deliver unto the said apprentice double apparel of all sorts, good and new, (that is to say) one good suit for the holydays, and another for the work-days. In witness, &c.

We J. S. and W. N. esquires, two of his majesty's justices of the peace for the county aforesaid, (the said J. S. being of the quorum) do hereby declare our consent to the putting forth of the abovesaid L. M. apprentice to the said J. K. according to the intent and meaning of the indenture above written.

J. S.
W. N.

Warrant against an idle and disorderly Apprentice.

To the constable of the parish of, &c.

Essex, to wit. **W** Hereas complaint hath been made unto me by A. B. of, &c. blacksmith, that C. his apprentice, is not only a negligent, but a stubborn and disorderly servant, and very much misbehaves himself towards the said A. B. These are therefore to command you to bring the said

5 El. c. 4.
He may be sent to the house of correction.

C. D.

C. D. before me, or some other justice of the peace for the county, to be examined in the premisses, and that such order be made therein as to justice appertains. Given, &c.

A Warrant against an Apprentice for departing from his Master.

To all constables of the parish of, &c.

5 El. c. 4.
The justice may grant his warrant upon complaint of the master, and he may reconcile the matter if he can; but I do not see how he can punish an apprentice by indenture; the sessions may.

54. Berks, to wit. **W** Hereas complaint hath been made me by L. M. K. &c. that C. D. apprentice, hath lately departed from his master contrary to law. These are therefore in his majesty's name to command you to apprehend the said C. D. and bring him before me, or some other justice of peace for this county, to answer the premisses. Given under hand and seal, &c.

An information will not lie in this case, but an action of case, against him who receives an apprentice by indenture.

A Warrant against a Master for abusing his Apprentice.

To the constable of, &c.

6 El. c. 4.

55. Berks, to wit. **W** Hereas complaint hath been made me by J. K. apprentice to L. M. of parish of, &c. taylor, that the said L. M. doth not allow unto said apprentice sufficient meat, drink and apparel, and hath immoderately corrected him without any just cause, &c. These are therefore (as in the former warrant.)

This warrant must be made by the justices where the master dwelleth, or mayor or head officer of a corporation; and if justice cannot reconcile them, he may bind the master to the next sessions, whereof four justices (*quorum unus*) may discharge the apprentice under their hands and seals.

The Discharge.

6 El. c. 5.

56. Berks, to wit. **W** E J. S. N. W. S. B. G. T. of his majesty's justices of the peace (whereof J. S. is of the quorum) for the county aforesaid, have heard and examined the matter in difference between J. N. apprentice to R. G. of, &c. and the said R. G. and it appearing

the said R. G. hath not allowed his said apprentice sufficient
&c. and hath several times beaten him very immoderately
about any just occasion; we do therefore for the cause aforesaid
charge the said J. N. from his said apprenticeship, and do hereby
our respective hands and seals adjudge and declare, that the
J. N. is discharged from being any longer an apprentice to the
R. G. Witness our hands and seals, &c.

This discharge must be inrolled by the clerk of the peace, or
n-clerk, which shall be good against the master, his execu-
and administrators.

Warrant against a Master, to levy the Sum
of ten Pounds for refusing to take an Ap-
prentice.

the churchwardens and overseers of the poor of the parish
of, &c.

Berks, to wit. **W** Hereas J. E. a poor male child, was, 8 & 9 W. 3.
by the churchwardens and overseers of c. 30.

poor of the parish of, &c. by and with the consent of J. S. and Two justices:
F. two of his majesty's justices of the peace for the said county,
ely placed and bound by indenture as an apprentice to L. M. of,
to dwell with him from the date of the said indenture, until
said J. F. should attain his age of 24 years, pursuant to the
ute in that case made and provided: And whereas it appears
to us upon the oath of T. S. one of the churchwardens of the pa-
of, &c. that the said L. M. doth refuse to receive the said
E. and provide for him as by law he ought to do, and doth re-
to seal a counterpart of the said indenture: These are there- Where the of-
e in his majesty's name to command you, &c. to levy the sum of fence was com-
pounds by distress and sale of the goods of the said L. M. for the mitted,
of the poor of the parish, &c. and hereof fail not. Given un-
our hands and seals, &c.

C H A P. XXXVI.

Appeals.

A PPEALS may be brought to the quarter-sessions by Appeals may be
any grieved with any rate or tax, or other act done by made to quarter-
churchwardens and other persons, or by justices of peace out of sessions.
sessions.

sessions. In cases of settlements and removal of the poor, justices in their general sessions shall make such order therein, they shall think convenient, and the same shall conclude and bind all parties. 43 *El. c. 2.*

Justices may order costs on appeals.

2. Justices upon any appeal in their general or quarter sessions, concerning the settlement of any poor, or upon appeal made of notice given of such appeal, though not afterwards prosecuted, shall order to the party, for whom the appeal shall be determined, or to whom such notice was given, such costs and charges in the law as they shall think reasonable. 8 & 9 *W. c. 30.*

If live in another county, the justice on copy of the order may make a warrant, &c.

And if the person ordered to pay such costs live out of the jurisdiction of the court, any justice of the county, where he lives, on producing a copy of the said order, and proving the same by one credible witness, by warrant under hand and seal, is to cause the money mentioned in the said order to be levied by distress and sale of the goods of the person ordered to pay; and if no distress can be had, may commit the person to the common gaol for twenty days. *Ibid.*

No appeal to be proceeded on till notice given, &c.

3. No appeal from any order for removal of a poor person shall be proceeded upon at quarter-sessions, unless reasonable notice be given by the officers of the parish making the appeal to the officers of the parish from which such poor person shall be removed; and if reasonable time of notice be not given, justices may adjourn the appeal to the next quarter-sessions. And if the quarter-sessions determine the appeal in favour of the appellant, they shall order such appellant to pay so much money as shall be reasonably expended by the parish, on whose behalf the appeal was made, for the relief of the poor person between the time of undue removal and the determination of the appeal, to be recovered in the same manner as costs and charges upon appeal. 9 *Geo. 1. c. 7.*

No time limited to an appeal.

4. No appeal lies from the quarter sessions to the judges in assize, &c. 2 *Bulst. 355.* Where there is a town corporate which has a sessions of their own, if the parties will appeal from an order made there, they must appeal to the county sessions, and not to their own sessions. Defendant being overseer of *Westbury Wils.* and his accounts being allowed and confirmed; several years afterwards the parish appeals against his accounts; the statute being silent as to the time, the parish may appeal at any time. It should seem by a case between the queen and the parish of *St Giles, Cases 2. Anne 259, 260.* that an appeal upon an order for levying a poor's rate, need not be to the next quarter-sessions. See *chap. XLVI. sect. 5.*

Appeal must be lodged at next sessions, but may be determined at an adjourned sessions.

5. All appeals must be determined at the sessions in that county or place wherein the parish doth lie, from whence the poor person is removed, and not else. The next sessions after an order made, and an appeal brought, adjourned the appeal to the next sessions following, then they made an order; and upon a motion to quash it, for that the appeal ought to be determined the next

next sessions, and not at an adjourned sessions, it was adjudged, that the appeal must be lodged at the next sessions, but may be determined at an adjourned sessions. *Salk. 605. Inhab. King's v. Inhab. par. St. Peter in St. Albans, 1 Ld. Raym. 11. S. C.*

6. A determination on an appeal to the sessions is only binding between the parties to the appeal. *Inter Bedenham & King-Bowsey, Hill. 11 W. 3. B. R. Salk. 486.*
See title *Appeal* in the table.

A Notice of Appeal.

To the churchwardens and overseers of, &c.

THIS is to inform you, and every of you, that we the churchwardens and overseers of the poor of the parish of, &c. do intend at the next quarter-sessions of the peace to be holden for the county of, &c. to commence and prosecute, an appeal against you, the churchwardens and overseers of the poor of the parish of, &c. aforesaid, for and concerning the unjust removal of B. from your said parish of, &c. to our parish of, &c. of which we are to take due notice. Witness, &c.

C H A P. XXXVII.

Bastards.

BY the civil and canon law, a child born before marriage might inherit, if the marriage followed; and this was adopted *anno 20 Hen. 3.* to be made the law of England: The Who are bastards by the civil and canon law.
The people all concurred, because it was the law of the church; the temporal lords would not admit it, crying out one and another, *Nolumus leges Angliæ mutari*; for 'tis against a rule in law, *Qui ex damnato coitu nascuntur, inter liberos non computantur*; which is true as to the inheritance, but 'tis not so as to the marriage good; as where it was between a man and his own sister's bastard. If the wife live in adultery, and hath a child by another man, yet, if by possibility the husband had access to her, it shall be presumed his child. And if the husband and wife consent to live separate, the children born after separation shall be taken to be legitimate, because the access of the husband shall be presumed, unless it be otherwise found. *Salk.*
So if the child is born but three days after the marriage, it shall be legitimate. *1 Inst. 244.* Children born after a divorce are bastards;
N

bastards; and unless cohabitation can be proved, it shall not be intended. *Cases 2. Anne 106.* Parishes of *St. George, Southwark* and *St. Margaret, Westminster*. A bastard was begotten on a mariner's wife, and born during his absence: The order recited that he was out of the realm at the time when the child was begotten and born. This is ill, because it does not say that the husband was beyond sea forty weeks before the birth of the child. It is not to be said that he was beyond sea at the time of the conception, for that cannot be certainly known. *Car. 469, 470. Rex v. Alberton, 1 Ld. Raym. 395.* Motion to quash an order of bastardy, made on the evidence of the mother of the child, who was a married woman; the court were of opinion, that though her evidence of the criminal conversation was good for the sake of necessity, yet there ought to be other proof of the want of access by the husband to the wife. *Mich. 8 G. 2. The King against Reading, Andrews's Reports 10.* An order of bastardy was made by two justices, reciting, that where *Elizabeth Sharplefs*, the wife of *Richard Sharplefs*, in 1728 was delivered of a child in *Bedel*, and that on the examination of the said *Elizabeth* and on other proof, it appeared that the said husband for seven years and nine months before that time had not cohabited with or had any access to her, and that the said *Elizabeth* did not know whether he was alive or dead; and therefore it is adjudged that the said child is a bastard, and that *Christopher Moor* is the father. And upon appeal an order of sessions was made, which, after reciting the original order, set out, that it appeared further on the evidence of the said *Elizabeth*, that in 1728 she was married to *Richard Sharplefs* in a bigamous marriage by persons unknown, and also that it appeared by the certificate of the commissary general, and the evidence of *E. C.* that *Richard Sharplefs* was mustered in the guards in 1733, and continued there from that time until but the said *E. C.* did not tell whether the said *Richard Sharplefs* was the husband of the said *Elizabeth*. And it not appearing that her husband was dead, therefore the sessions quashed the first order; but the court of *King's Bench* confirmed the order of the justices, and quashed the order of sessions, being clearly of opinion, 1. That though the evidence of the wife alone be not sufficient in this case, yet the original order is good, being made not only on her testimony, but on other proof. 2. That the sessions order was quashed because the only thing they proceeded upon was the life of the husband, which was not material, as there was no access by the husband to the wife; which this order admits. *Trin. 1734. The king against the inhabitants of Bedel, Andrews's Reports 10.* See 3 *Williams's Rep. 276.*

By the civil law a bastard is incapable of all testamentary benefit, &c.

2. By the civil law a bastard is made incapable of all testamentary benefit, either from father or mother; but by a common law he may take by a devise any reasonable competency for his maintenance.

aintenance. But both by the common law and statute he is allowed to be capable of a maintenance; for by the one, any man is permitted to give his bastard lands or tenements by his will, and the other hath provided for his convenient maintenance and relief by the parents; and yet he is of no consideration in the common law; for he is not accounted of the blood so as to raise issue, and therefore natural affection is not a sufficient consideration in such a case. 18 El. c. 3. Dyer 374.

How he is capable by the common and statute law, &c.

3. He is not comprehended by the name of a child or children in the statute of wills; he can have no heir, but of his very body; and if he dies without such heir, his lands shall escheat: and yet in some cases a bastard may gain the right of inheritance against a lawful son; as if a man who is seised in fee hath an eldest son who is a bastard, and the youngest legitimate, by the same and the same woman, then the father dies, and the bastard has issue, and dieth without being disturbed in his lifetime by him who was legitimate, he can never afterwards recover the land: Nor can any collateral heir, in case there had been no such son, because the rule is *Non est jussum aliquem post mortem facere bastardum, qui toto tempore vitæ pro legitimo habetur*. 8 Rep. 101. 1 Inst. 284. But there are several acts by which the legitimate son may interrupt the possession of the bastard; as if he enter or take any manner of profits by putting his cattle upon the ground, or otherwise, though no express words of entry are used.

Not included in the statute of wills, &c.

4. As to the time of the birth of a child, 'tis usually within nine months and ten days after the conception, accounting 30 days to the month; yet by accidents the birth may be occasioned sooner or latter; as where a child was born eight days after the forty weeks, it was held legitimate; but in this case there were these circumstances; viz. the husband was sick but one day before he died, and the wife was exposed to cold, and hard usage by her father-in-law, and this occasioned her travel for six weeks; but as soon as she was taken into a house, and was supplied with necessaries, she was delivered in twenty four hours. 1 Jac. 541. Palm. 9. Godb. 281. 1 Inst. 123. b. D. A. 26. p. 1.

5. Where a suit is commenced in a temporal court for an inheritance, and the defendant pleads in disability, that the plaintiff is a bastard, this must be tried in the spiritual court, and this is called general bastardy, for the issue must be joined upon it, and transmitted by writ to the bishop, who is to try it in his consistory court, not according to the canon law, but pursuant to the rules of the common law; for these laws differ in this matter, as above, § 1. When the matter is tried by the bishop, he is to certify it under his seal to the king's justices, which certificate is conclusive to them, for they are to give judgment, as is found there. But where the principal matter of the suit is concerning bastardy itself, as if an action of slander is

General bastardy.

Special bastardy.

brought for calling the plaintiff bastard, and the defendant justifies that he is a bastard, it shall be tried by the country; and this is called special battardy.

6. The substance of the law concerning bastards, and what I have to add further concerning them, may be reduced under five heads, and some cases relating thereto. 1st, *Who is a bastard.* 2dly, *Of what bastards the justices, sessions, or overseers are to take cognizance.* 3dly, *What may be done to indemnify the parish before the child be born.* 4thly, *What ought to be done after the child is born.* 5thly, *Of proceeding on appeal and certiorari.*

Who are bastards.

7. Of which in their order; and first, All born out of lawful wedlock are bastards. Issue that is born forty weeks and eight days after the death or departure of the father is no bastard. *Cro. Jac.* 541. *Also* cont. *Bowtrell*, S. C. *Godb.* 281. S. C. *Palm.* 9. (See before §. 4.) Though some books hold forty weeks to be the latest time for the birth of legitimate issue. *Co. Litt.* 123. b. If a man be divorced, *causa frigiditytis*, from his first wife, and after marries another, and hath issue, it is no bastard. *Moor* 255. *Webber* cont. *Bury*, S. C. *Plowd.* 366. S. C. 2 *Leonard* 166. S. C. 1 *And.* 185. If one marry a second wife, the first living, the issue by the second wife is a bastard, because the marriage was void. 18 H. 6. 13. 18 Ed. 4. 30, &c. The issue of a marriage between persons within the levitical degrees is no bastard till the parties are divorced; for the marriage is not void but voidable, be they never so nearly related. 18 Hen. 6. cap. 34. 18 H. 6. 32, &c. Issue born before marriage, though the parties after intermarry, is a bastard. 47 Ed. 3. 14. b. &c. Though a child be born during marriage, yet if the woman's husband was gelt, the issue is a bastard. 1 *Roll's Abr.* 358. 1 *D. A.* 728. p. 8. So if born after her husband had been years beyond sea, or not within the four seas during the woman's being with child. 7 H. 4. 19. and see above §. 1. Or if the husband be less than 14 years old. 1 H. 6. 3, 8, &c. Or if she was visibly big with child at the time of her marriage. 1 *Roll's Abr.* 359. *Salk.* 120. *Reg.* cont. *Murrey*. The issue also is bastardised by the parents being divorced *a vinculo matrimonii* because in all those divorces the marriage is declared to have been originally null and void; but this divorce being pronounced in the spiritual court *pro peccatis*, after the death of the parties the marriage cannot be questioned. *Co. Lit.* 235. 39 Ed. 3. 316, &c. If two are divorced *a mensa & thoro*, the issue born after, shall be presumed to be a bastard, unless it be proved that the parties did converse together. *Salk.* 123. The parishes of *St. George, Southwark*, and *St. Margaret, Westminster*. But if husband and wife live separately by consent, and yet she is delivered of a child, the child shall not be deemed a bastard, till it be proved that the husband had no access to his wife. *Id.* *Ibid.*

8. Secondly

8 Secondly, *Of what bastards the justices, and what justices, and how, either at the sessions or elsewhere, or the overseers, are to take cognizance.* By the enacting part of the stat. of 18 Eliz.

c. 3. it appears, that no power is given, but only over the bastards of people unable to maintain them, and that for the sake of indemnifying the parish, and agreeable to this are many judgments in our books; and the very words of the order, which says, *that the child is likely to become chargeable to the parish*, sufficiently shew they have no jurisdiction of others. *Cro. Car. 436. Salter cont. Brown. 2 Bulst. 343. Bowber cont. Panter.* Having a bastard is not punishable by stat. 18 Eliz. unless it be chargeable to the parish. *Comb. 434.* One of the justices, if examined by two justices, must be of the *quorum*, and though the stat. 18 Eliz. c. 3. uses the words in or next the limits of the parish-church where such child shall be born, yet may two justices next to the parish examine the matter. *2 Sid. 222. Rex cont. Sharp. 3 Keb. 383. Rex cont. Sennings.* If a man be adjudged, by two justices, to be the father of a bastard, he is stopped against all the world to say the contrary; and a man may justify the calling him so. *Thornton and Pickering cited, Ld. Raym. 394.*

9. Before the statute of 3 Car. 1. c. 3. the justices of the sessions had no authority to meddle in the case of bastardy, till the two next justices, according to the stat. 18 Eliz. c. 3. had made an order therein, and then, and not before (the party refusing to perform the order, and giving reasonable security to appear at the next sessions, and abide such order as the justices there, or the major part of them, should make, &c.) the justices of the sessions might make a new order, otherwise not. But now, by the stat. 3 Car. 1. c. 4. the justices of the sessions have a power and authority originally to make an order in the case of bastardy; the words of the statute are, *viz.* That all justices of peace, within their several limits and precincts, and in their several sessions, may do and execute all things concerning that part of the statute concerning bastards begotten out of lawful matrimony, that by justices of the peace in their several counties were the said statute limited to be done. *Cro. Car. 470. Slate's case.*

10. Thirdly, *What the justices and overseers may do, to prevent any damage to the parish from a bastard likely to be born and chargeable to the parish.* The first thing to be done, if by law cannot be removed to the place of her last legal settlement, is to examine the woman, Who is the father of the child with which she goes? And this may be done by one justice, on the oath of the woman: But after she is delivered, she must be again examined by two justices, whereof one must be of the *quorum*; if it is not contrary to law, to examine the woman on oath, if she can tell who is the father. *Dalt. Justice 40. 2. See below, sect. 51, &c.*

What the justices and overseers may do to prevent any damage to the parish.

Not by compulsion before the delivery, as examined by the stat. 6 G. 2. See below, sect. 51, &c.

And this ought to be done before the justice can send his warrant to apprehend the reputed father. But by the new stat. she cannot be examined, unless she thinks fit, until after the birth, see below, §. 13.

A Woman's Examination before the Child's Birth.

11. Midd', ff. **T**HE examination of E. W. single woman taken before me J. S. esq; one of his majesty's justices of the peace for the said county, this first day of May in the year of our Lord 1732, who on her oath says, that she is a hired servant to T. G. of, &c. cordwainer, at the yearly wages of three pounds a year, and has continued in her said service from the 10th of April 1729. And further saith, that in the month of last November, as she, this examinant, was making one of her master's beds in a back room, one R. G. apothecary, living next door to her master's house came into the said back room to her, no other person present, and promising great kindness to her, prevailed with her, and then had the carnal knowledge of her body, once on the said bed, and has had the like three several times since; and that the said R. G. did get her with child of the child or children she now goeth with and is pregnant of, which said child or children when born, is, and are likely to be a bastard or bastards, and become chargeable to the parish of S. And this examinant further saith, that he the said R. G. and no other person, is the father of the said child or children.

E. W.

Sworn the day and year above-mentioned before me J. S.

After examination the justice is to make out a warrant,

12. The justices of peace, after having taken the examination, must then make out a warrant on that, for the apprehending the person so charged, to the constable, who though he is not named in the statute, nor by it appointed to execute the warrants, yet the justice may command him to do it; for as common law the constables were subordinate to the conservators of the peace, so they are now the proper officers of the justice of the peace. *Salk. 380. Reg. cont. Wyat.*

The Warrant against the reputed Father of a Bastard Child, before it is born.

To the constable, headborough, &c.

13. Midd', ff. **W**Hereas on the voluntary examination of E. W. &c. single woman, taken this day before me on oath, it appeareth, that she is now with child of a

ward child or children, which when born is or are likely to become chargeable to the parish of S. And whereas at the examination of the said E. W. on oath before me, she the said E. W. did charge R. G. of, &c. apothecary, to have begotten the same: These are therefore in his majesty's name to command you, or some or one of you, to apprehend the said R. G. and bring him before me, or some other of his majesty's justices of the peace of the said county, to be examined touching the premisses, and to be further dealt with according to law. Given under my hand and seal, &c.

Note; This warrant before the birth is given by stat. 6 Geo. 2. c. 31. but the woman is not compellable to be examined till a month after delivery. See below, §. 51, 52, 53, 54. 3 Keb. Rex v. Brown. Justices may take security of the reputed father before the delivery of the woman; by the equity of the stat. 18 El. c. 3. per Twisden, justice, settled by stat. 6 Geo. 2. c. 31.

A Warrant against the Father of a Bastard Child, after it is born.

14. Middlesex, **W** Hereas upon the examination of A. P. single to wit, woman, taken in writing upon oath before me, one of his majesty's justices of the peace for the said county, it appeareth, that the said A. P. hath lately been delivered of a bastard child, and that she doth charge J. L. of with having gotten her with child, which child is chargeable (or likely to become chargeable, as the case is) to the parish of

These are therefore; upon the complaint of the overseers of the poor of the said parish of to require you to bring the said J. L. before me, or some other of his majesty's justices of the peace, to be examined and dealt with according to law. Given, &c.

A Commitment of the Father of a Bastard Child.

To the keeper of the gaol for the county of, &c.

15. Middlesex, **W** Hereas upon examination of A. P. single to wit, woman, taken in writing upon oath before me, one of his majesty's justices of the peace for the said county, it appeareth, that the said A. P. hath lately been delivered of a bastard child, and that she doth charge J. L. of with having gotten her with child, which child is chargeable (or likely to become chargeable, as the case is) to the parish of

And whereas the said J. L. doth refuse to give security to indemnify

nify the said parish of _____ or enter into a recognizance, with sufficient surety, to appear at the next general sessions of the peace to be holden for the said county, and to abide and perform such order as shall be made in pursuance of the statutes in such case made and provided:

These are therefore to require you to receive the said J. L. into your custody, and him safely keep until discharged by due course of law. Given, &c.

16. The party may, if he will, come before the justice, and by recognizance be bound with sureties for his appearance, and then a superedeas shall be sent to the above-mentioned warrant. When the person is before the justice, he must enter into a recognizance with sufficient sureties, for his appearance at the next sessions, when he may be continued upon the recognizance till the woman is delivered of the child; and if he refuse to enter into such recognizance, he may be committed. The condition of the recognizance may be either for the putative father's appearance at the next sessions, or at the next sessions after the child shall be born, or he may give bond to indemnify the parish.

Recognizance for Bastardy, where two are Manu- captors for the Man in Custody.

17. Middlesex, **B**E it remembred, that on the tenth day of May to wit, _____ in the fourth year of the reign, &c. and in the year of our Lord 1733, M. R. of L. in the county aforesaid, victualler, and E. M. of L. aforesaid, gent. came before me J. S. one of his majesty's justices of the peace for the said county, and took in hand, and each of them took in hand for N. T. of the parish of B. in the county aforesaid, taylor, under the penalty of twenty pounds of lawful money of Great Britain; which said sums they, and each of them acknowledged to owe to the said lord the king, and granted to be made and levied of their goods and chattels, lands and tenements, to the use and behoof of the said lord the king, his heirs and successors, if the aforesaid N. T. shall make default in the condition under-written.

The Condition of a Recognizance of one charged to be the Father of a Bastard Child before its Birth, to appear at the Sessions.

18. Midd. ff. **T**HE condition of this recognizance is such, that if N. T. aforesaid do personally appear at the next general quarter-sessions of the peace to be holden for the said county of M. and there to abide and perform such order as shall be made

de upon the complaint of the overseers of the poor of the parish of
for getting S. T. single woman with child, which child is
ly to be born a bastard, and to be chargeable to the said parish
P. (or, as the case is, for begetting a bastard born in the said
rith on the body of S. T. single woman, which bastard child is
ome chargeable to the said parish;) that then this recognizance
ll be void, or else remain in full force.

ken and acknowledged
the day of &c.
before me

J. S.

The party accused may give a bond to indemnify the parish.
If the putative father should refuse to give sureties for his ap-
pearance, or bond to indemnify the parish, then he is to be
mitted.

**Warrant against the Father of a Bastard Child
before the Birth.**

Midd. ff. **W** Hereas upon the examination of A. P.
single woman, taken in writing upon
b before me, one of his majesty's justices of the peace for the said
nty, it appeareth, that the said A. P. is now with child, and
t she doth charge J. L. of with having gotten her
b child, which child is likely to be born a bastard, and to be
rgeable to the parish of

These are therefore, upon the complaint of the overseers of the
of the said parish of to require you to bring
said J. L. before me, or some other of his majesty's justices of
peace, to be examined and dealt with according to law.
ven, &c.

20. Fourthly, Of what may be done after the child is born, and What may be
be punishment of the parents. The first thing to be done after the
child is born, is again to examine the mother as to the fa- child is born,
r, and this must be done by the exprefs words of the statute
8 Eliz. c. 3. by two justices of the peace, and one of them
t be of the quorum; and it is a judicial act, and ought to be
e in the presence of both the justices, and not by one singly,
by him reported to the other. 6 Mod. 180. Rep. A. 2.
Regina cont. West. But an order for keeping a bastard
d shall not be quashed for want of saying, Quor. unus, &c.
ber. 63.

The

The Form of an Examination after the Birth of Bastard Child.

21. Midd. ff. **T**HE examination of S. S. of, &c. taken before us, J. F. and L. M. esqrs. two of his majesty's justices of the peace for the said county, (whereof J. F. of the quorum) the 10th day of May in the year of our Lord 1733 who upon her oath saith, that the female bastard child, of whom she was delivered the second day of April last, about three o'clock in the afternoon, in the parish of, &c. was begotten by R. G. commander of his majesty's ship the Kingston, who cruising off the coast of D. and coming ashore there, frequented this examination house, (she keeping a victualling house) and there became acquainted with her, and had the carnal knowledge of her body: And the examinant further upon oath saith, that he the said R. G. and no other person whatsoever, is the only true and natural father of the said child, of which she was delivered as aforesaid.

Sworn the day and year
aforesaid, J. F. L. M.

Justices must
convene the putative father before they make order.

22. The justices, by the act 12 El. c. 3. being to make order, as they shall think fit, both for the providing for the child, the discharge of the parish, and also the punishment of the parents, in justice and prudence ought not to proceed to it, 'till they have convened the putative father before them, especially now that daily experience shews, that many persons are wrongfully accused in these cases.

A Warrant to cause the Mother and reputed
father to appear.

To all constables, &c.

23. Midd. ff. **F**Orasmuch as we (two of his majesty's justices of the peace for the county of Middlesex, whereof A. B. is of the quorum) are informed that A. B. of the parish of R. in the county aforesaid (within the said parish) hath been delivered of a bastard child yet living, and chargeable to the parish aforesaid; and forasmuch as the said A. B. upon her examination taken, hath charged R. R. of, &c. to have gotten the said child: These are therefore in his majesty's name to command and every of you, that some or one of you do bring the said R. R. before us, at the house of O. in T. in the county aforesaid, upon the 20th of May next at ten of the clock in the forenoon of the day.

to be by us further examined touching the premisses, and that give notice thereof unto the said R. R. (if conveniently you can) the end, that he may likewise be at the time and place aforesaid, make his lawful defence herein (if he shall then see fit); and further, that you, or some or one of you, do give notice to the several persons whose names are hereunder-written, that they, and every of them, are by us required to appear at the time and place aforesaid, to certify their several knowledges touching the premisses, the end that, upon the examination of the cause and circumstances, we may take such order therein, as to justice doth appertain. And finally, that what you shall do, in execution of this our precept, you make known unto us, at the time and place aforesaid. Hereof we will not at your perils. Given under our hands and seals at, &c. A. B. of, &c. C. D. of, &c. E. F. of, &c.

An order (of bastardy as I conceive) was quashed, 1. Because founded on affidavit, and not on an examination *vi va voce*. Because to pay 6 l. for the charges the parish had been at, without shewing how, or for what. Comber. 103.

Summons for the reputed Father to appear, &c.

Midd. ff. **W** Hereas A. B. of, &c. single woman, was on the day of delivered of a male bastard child, in the parish of which child is become chargeable to the said parish, and on her hath been charged you the said to have begotten the said bastard child on her body; These are therefore in his majesty's name to require you the said personally to be and appear before us, two of his majesty's justices of the peace, at the vestry room of the parish of on next, at of the clock in the forenoon, to shew cause why you should not be adjudged the reputed father of the said male bastard child, and why upon the complaint of the churchwardens and overseers of the poor of the said parish of we should not make an order upon you the said as well for the relief and indemnity of the said parish, touching the premisses, as for the keeping the said male bastard child: And hereof you are not to fail. Given under our hands, this day of 1739.

A Warrant by two Justices, after a former Order, to apprehend the Father of a Bastard Child, &c.

Midd. ff. **W** Hereas it doth appear by an order under the hands and seals of us A. B. and C. D. two of his majesty's justices of the peace for the county of Middlesex (the

(the said A. B. being of the quorum) dwelling in the parish of
made upon complaint of the churchwardens and overseers of the poor of the said parish; as also upon the oath of
single woman, that the said
day of (here recite the order)

These are therefore to will and require, and in his majesty's name
strictly to charge and command you, and every of you, on
hereof, to apprehend the body of the said
him before one of his majesty's justices of the peace for the said county
to the end he may give good security to perform the aforesaid order
or else personally to appear at the next general quarter-sessions of the
peace to be holden for the said county, after he shall herewith
taken, there to abide and perform such order as the justices of the
peace in court shall make touching the premisses, and be further
dealt with according to law. And hereof fail not at your peril.
Given, &c.

If not, then the
justices must
proceed to make
the order.

Rules about making
orders, &c.

26. If the party do not so indemnify the parish, the same two
justices must proceed to make an order for the security of the pa-
rish, and though the 18 Eliz. c. 3. says, that they shall and may
take order at their discretions for the security of the parish; yet
the King's Bench having quashed many orders, not only for de-
fect in form, but also for the doing things beyond the limits of
their jurisdiction, I shall here set down such rules as I find in
our books, concerning the drawing such orders. It must be
concerning a bastard, and so expressed, and likely to become
chargeable. An exception was taken to an order for keeping
a bastard child, as not being pursuant to the statute, the order
being, *till he should be no longer chargeable*; whereas by the sta-
tute it should be, *till the child be able to get his own living*; this
exception was disallowed, and the order confirmed. *Comber. 69.*
See below, *sect. 28.* It must appear how long the father is to
maintain it. An order of bastardy to pay till the child be ten
years old, is not according to the statute; for he may not be
chargeable so long as till ten years old. *Cases 2. Anne 172.*
The Queen v. Atkins, ibid. 178. The Queen v. Collins, Style 154.
1 Vent. 137. It must directly affirm who is the reputed father.
Sid. 363.

27. By the express words of the *stat. c. 3.* the justices may
make an order to oblige the father or mother to maintain the
child: And no other person being mentioned in the statute, or-
ders for the putative grandfather, or a person to contribute, be-
cause he permitted a soldier to get a woman with child, have
been quashed. 3 *Keble 747. The King cont. Linter. 1 Vent.*
310. Anonymus. Style 207. Anonymus. One of the justices must
be of the quorum, 18 *El. c. 3.* 2 *Sid. 212. Rex cont. Sharp.*
and must be at the time they make the order in the county for
which they are justices. *Cro. Car. 213. arguendo in Helier's*
case.

Rex v. Heslop,
P. 7 G. 2. B. R.

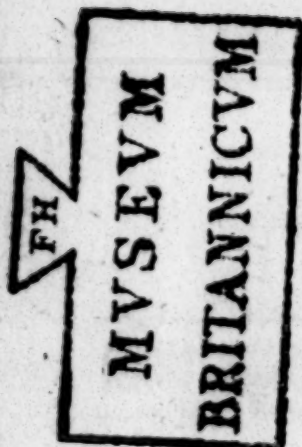
chap. 37.

It must appear by the order, that they are the justices next to the parish church where 'tis born, according to one book, (*Style* 154.) but it having been since resolved, that next to the parish church and next to the parish are the same, it sufficeth, if this appear in the order; but there is no doubt but it must be set forth in the order, that the justices were justices of the peace of that county where the child was born. *Style* 14. It must appear by the order, that the child was born in the parish to which the money is ordered to be paid, by the better opinion in the books. *Style* 14. 2 *Keble* 383.

28. The order must contain a positive adjudication of the putative father, *Style* 154. and that the child is likely to become chargeable to the parish. 1 *Vent.* 37. *Rex* cont. *Nelson*, 1 *Mod.* cont. *Salk.* 475. *Rex v. Matthews.* The justices may order the payment of a sum in gross, because it might be to reimburse the parish the extraordinary charge they had been at, before the order for the weekly payments was made. 2 *Sid.* 326. *cont. Hill.* *Salk.* 124. *Regina* cont. *Odam.* No allowance can be made to the midwife, but in discharge of the parish. *Vent.* 210. *Sherman's* case. And where it doth not appear in the order that the bastard child was chargeable, or likely to become chargeable to the parish, the order was quashed. *Comb.* 1 *Cro.* 36. *Sid.* 222. And it may in cases of bastard children be always so alledged with great truth, unless a competent livelihood hath been actually settled upon them. So that it seems if the midwife is not paid, the justice may order the payment of so much as she ought to have, to be made by the putative father to the churchwardens and overseers, who shall pay it to the midwife. Neither the justices or sessions have any power in case of bastardy, but to indemnify the parish; that is, to oblige the putative father to maintain the child, as long as it is, or may be chargeable to the parish; for the father may maintain the child when he pleases, and maintain it himself. Orders therefore for the payment of money weekly till the child attain a certain age, have been quashed. 2 *Saund.* 82. *Richards* al. cont. *Hodges.* *Salk.* 121. *Rex* cont. *Barebaker.* 1 *Vent.* *Burwell's* case, S. C. 1 *Mod.* 20. 1 *Vent.* 210. *Sherman's* case, &c. Nay an order has been quashed for ordering payment of money weekly, because 'twas not said for so long a time as it continued chargeable to the parish. *Style* 14. An order to make the weekly payments on Monday (though the week be not then expired) is well enough. 2. So ever since 43 *Eliz.* to pay it to the overseers. But 3. the order was quashed for false grammar, We the said justices doth adjudge. *Regina v. Weston*, 2 *Ld. Raym.* 1197. 1 *Salk.* 122.

29. It seems the justices ought to order the payments to be weekly, and not monthly. 2 *Sid.* 222. *Rex* cont. *Sharp.* They may order the putative father to give security for the payments,

ments, but cannot, as it seems, order that he shall give such security as the churchwardens shall approve. 2 *Keb.* 300. *King v. Boniface.* * If the justices order that the churchwardens and overseers of the poor shall seize of the defendant's goods what they shall judge proper, to secure the parish from the maintenance of the child, the order shall be quashed; for *stat.* 13 & 14 *Car.* 2. c. 12. they have only authority to make an order to empower the churchwardens and overseers, &c. to seize what the justices shall judge proper, and not what the churchwardens, &c. shall judge proper, &c. *Regina v. Chaffin* & *Ld. Raym.* 858. Justices of the peace before the institution of overseers, might order money to be paid for the relief of a bastard to two or three of the parish weekly, and now they may order it to be paid to the overseers. *Salk.* 122. *Regina v. Weston.* The adjudication in the order must be by both the justices; and an order was quashed, because it was, We the justices doth adjudge. *Ibidem.* They may order the father to pay so much weekly, or maintain the child. 1 *Keb.* 570. *Regina v. Terry.* An order for one to keep a bastard child got of a married woman, ought to rehearse, that the father at the time it was got was beyond sea. 5 *Mod.* 419. *Alinson cont. Spence* *Rex v. Redding, Mich.* 8 *Geo.* 2.



An Order for the reputed Father of a Bastard Child to discharge the Parish.

30. *Midd. ss.* **W** Hereas it hath appeared unto us, and the hands are hereunto set, two of his majesty's justices of the peace for the county of Middlesex (one being of the quorum) dwelling in the parish of *St. Martin in the* liberty of Westminster in the said county, as well upon the complaint of the present churchwardens and overseers of the poor of the said parish, as also by the oath of *single women* that she the said *was on* delivered of a male bastard child, born of her body in the said parish of *and the* the said male bastard child is chargeable to the said parish of *and likely* and likely so to continue; and further, that one A. B. unlawfully beget the said male bastard child, so born as aforesaid on the body of the said *And whereas* And whereas it hath appeared to us upon oath, that the said *hath been* hath been duly summoned to appear before us the said justices, to the end we might examine into the cause and circumstances of the premisses: And whereas he the said *hath neglected* hath neglected to appear before us according to such summons: Now upon the examination of the cause and circumstances of the said premisses by the oath of the said *the mother,* the mother, we the said justices do hereby adjudge him the said *the reputed* the reputed father of the said male bastard child, so born of

Or he the said
A. B. hath ap-
peared before us
(as the case is.)

of the said as aforesaid: And thereupon
do order, as well for the better relief and keeping indemnified
the said parish of as for the sustentation and relief
the said male bastard child, that the said shall
do forthwith, upon notice of this our order, pay, or cause to be
paid, unto the present churchwardens and overseers of the poor of
the said parish of or to some or one of them, the
sum of of lawful money of Great Britain, for
and towards the lying-in, and laying of the said
of the said male bastard child. And we do hereby also
further order, that the said shall likewise pay,
cause to be paid, unto the churchwardens and overseers of the
poor of the said parish of for the time being, or
some or one of them, the sum of like law-
ful money, by the week, weekly, and every week, from
for and towards the keeping, sustentation, and maintenance
the said child, for and during so long time as the said male ba-
rd child shall continue and be a charge and burthen, or likely so
be on the said parish; and we do further order, that the said
D. (the mother) shall also pay, or cause to be paid to the said
churchwardens and overseers of the poor of the said parish of
or to some or one of them, the sum of a week,
weekly, and every week, for and towards the maintenance of the
said child for and during so long time as the said child shall continue
likely to be chargeable to the said parish, in case she doth not nurse
and take care of the said child. Given under our hands, &c.

An order that the reputed father of a bastard child shall pay
two shillings per week, &c. and that the mother shall keep it, is
good and consistent. *Comber. 232.*

31. If the party charged with being the father comply with After security
the order, and put in security to indemnify the parish, if after given, bastard
the security given, the child become chargeable to the parish, becomes charge-
the justices of the peace, or the sessions, may not intermeddle, able, parish must
and the parish have no remedy but to sue the sureties on their put bond in suit.
bond. 2 *Saund. Rep.* 80. Note; By 18 *Eliz. cap.* 3. an order
or security could not be made until after contempt in point of
payment. *Regina v. Chaffey*, 2 *Ld. Raym.* 858. But it is now
otherwise by stat. 6 *Geo. 2. cap.* 31. post sect. 51. And Note,
That when an order is confirmed in *B. R.* an attachment lies for
non performance of it, and therefore *B. R.* will not take security
of the party for performance of it. 2 *Ld. Raym. ubi supra.*

32. If after the order made and subscribed by the two justices, The father or
either the mother or reputed father, upon notice thereof, shall mother who will
not for their part observe and perform the said order, then every not obey the
such person so making default in performing of the said order, order, commit-
are to be committed to the common gaol, there to remain with- ted, or give se-
out bail or mainprize, except he, she or they shall put in suffi- curity, &c.
cient

cient surety to perform the said order, or else personally to appear at the next general sessions of the peace, to be holden in that county where such order shall be taken, and also to abide such order as the said justices, or the major part of them, shall take and there shall take in that behalf, if they then and there shall take any; and that if at the said sessions the justices shall take any other order, then to perform and abide by the order before made. 18 El. c. 3.

A Warrant to commit the reputed Father to Gaol for not performing the Order of the two Justices, nor putting in Security to appear at the Sessions

33. **W** Hereas A. B. stands charged before us, C. D. and F. esqrs. two of his majesty's justices of the peace for the said county, whereof C. D. is of the quorum, upon the oath of G. H. single woman, for being the father of the male bastard child lately born of her body, in the parish of, &c. where it is now chargeable, of which said bastard child the said A. B. is by order duly executed adjudged the reputed father: And where as the said A. B. being duly served with the copy of the said order, doth refuse to perform the said order, or to find sufficient surety for his personal appearance at the next quarter-sessions of the peace to be holden for the said county, to abide such order, or any other order, as the justices there present shall in that behalf make. These are therefore to require you to arrest the body of the said A. B. and to commit him to the common gaol of the said county, until he shall be discharged by due course of law. Given under our hands and seals, &c.

Condition of the recognizance must be in the disjunctive, &c.

34. If the party will fulfil that part of the stat. which requires security for his appearance, the justices shall take a recognizance of him, the condition of which must be in the disjunctive, either to perform their order, or to appear at the sessions and abide by such order as shall there be made. 18 El. c. 3. 2 Bulst. 349. Rex cont. Smith.

A Commitment of the Father of a Bastard Child &c.

To the keeper of the gaol for the county of, &c.

35. Midd. ff. **W** Hereas upon examination of A. P. single man, taken in writing upon oath before B. one of his majesty's justices of the peace for the said county, appeareth, that the said A. P. is now with child, and that

charge J. L. of *with having gotten her with*
child, which child is likely to be born a bastard, and to be charge-
able to the parish of And whereas the said
 L. doth refuse to give security to indemnify the said parish, or
 enter into a recognisance with sufficient surety, to appear at the
 next general sessions of the peace, to be holden for the said county,
 and to abide and perform such order as shall be then and there made
 in pursuance of the statutes concerning bastards; These are there-
 fore to require you to receive the said J. L. into your custody, and
 safely keep until discharged by due course of law. Given, &c.

The Condition of a Recognizance to appear at the
 Sessions after Order made.

THE condition, &c. That if the above bounden A. B.
 shall personally appear at the next general quarter-
 sessions of the peace, to be holden for the said county, and abide
 by order as shall be then made by the court, concerning a male
 bastard child, born of the body of C. D. single woman, whereof
 the said A. B. is adjudged the reputed father; that then, &c.

37. It seems, because the mother was rarely punished by
 El. c. 3. 'twas enacted by the stat. 7 Jac. 1. c. 4. as fol-
 lows; because great charge ariseth upon many places within this
 realm, by reason of bastardy, besides the great dishonour of
 mighty GOD, that every lewd woman, which, after this
 next session of parliament, shall have any bastard which may
 come chargeable to the parish, the justices of the peace shall
 commit such lewd woman to the house of correction; there to
 be punished and set on work during the term of one whole year;
 and if she shall offend again, then to be committed unto the
 house of correction as aforesaid, and there to remain until
 she can put in good sureties for her good behaviour not to offend
 again.

Justices may
 commit lewd
 women to the
 house of correc-
 tion.

2 Bulst. 248.

38. I observe that by this clause, no woman, whose child is
 of no probability of being chargeable to the parish, is within this

2. That to commit for life for the first offence is void. Cro.

47. 3. None can be punished upon this statute for her se-
 cond offence, unless she has been questioned and punished for her
 first offence; but she may be punished for her first fault, either
 by 8 El. c. 3. or by this act; but she may be punished for her
 second offence, as if it were her first, in case she were never pu-
 nished for her first. 2 Bulst. 348. It seems the child, though
 in practice is otherwise, ought not to be sent to the house of
 correction with the mother, but left to be provided for by the
 parish, or the putative father. Dalt. 41. A woman is not to re-
 ceive any punishment till she is delivered, and in 3 El. a woman

None can be pu-
 nished for second
 offence till con-
 victed of the first.

Mother not to
 be punished till
 delivered,

who was with child, being by the governors of *Bridewell* ordered to be whipped, and falling in labour thereon, they were fined in the Star-Chamber, and ordered to pay the woman money *Dalt.* 41.

A *Mittimus* of the Mother to the House of Correction.

To the keeper of the house of correction for the county of, &c.

39. **W** Hereas E. W. hath lately been delivered of a bastard child, likely to become chargeable to the parish of D where it was born: These are therefore to require you to receive into your custody the body of the said E. W. to be punished and set on work during the term of one whole year, according to the statute in that case made and provided; hereof fail not. Given under our hands and seals, &c.

She cannot be punished if she give security.

40. If she put in security to discharge the parish, she cannot be punished by the stat. 7 Jac. 1. c. 4. but by 18 El. c. 3. *Cal Magna Charta*, f. 733. the cause of the commitment ought to be mentioned in the *mittimus*, that it may appear if the prisoner be liable or not. *Dalt.* 419.

Churchwardens, &c. may seize effects of putative father, &c.

41. Both these statutes only extending to the persons of the offenders, and not to the estate, many times they withdraw themselves clandestinely, leaving often effects behind; therefore by the 13 & 14 Car. c. 12. it is enacted, that it shall and may be lawful for the churchwardens and overseers for the poor of such parish where any bastard child shall be born, to take and seize so much of the goods and chattels, and to receive so much of the annual rents and profits of the lands of such putative father or lewd mother, as shall be ordered by any two justices of the peace as aforesaid, for or towards the discharge of the parish to be confirmed at the sessions for the bringing up and providing for such bastard child; and thereupon it shall be lawful for the sessions to make an order for the churchwardens or overseers of the poor of such parish, to dispose of the goods, by sale or otherwise, or so much of them, for the purposes aforesaid, as the justices shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the sessions as aforesaid of his or her lands.

An Order for the Relief of the Parish in Case of a Bastard, out of the Estate of the reputed Father.

To the churchwardens and overseers of the poor of, &c. and every of them.

42. Berks, ff. **F**Orasmuch as upon your complaint to us, it appeareth that R. G. the reputed father (or the mother) of a bastard child, born in the parish aforesaid, hath lately run away out of the said parish, and left the said bastard child upon the charge of the parish aforesaid, although the said R. G. hath estate sufficient to discharge the said parish: These are therefore in his Majesty's name to require and authorise you, and every of you, that you, some or one of you, do seize and take so much of the goods and chattels, and receive so much of the annual rents and profits of the lands of the said R. G. as will amount to the sum of, &c. which we do, according to the form of the statute in that case made, order you to take and receive for or towards the discharge of the said parish, for the bringing up and providing for the aforesaid bastard child. Given under our hands and seals, &c.

43. If a bastard child is found wandering, it ought to be sent to the place of its birth.

44. 5thly, Of proceedings on appeal to the sessions, and on Certiorari in the King's Bench. The justices who made the order have no vote at the sessions, for they cannot be presumed to be indifferent persons where the legality of their own act is questioned. If the justices proceed on 18 Eliz. cap. 3. the sessions have no power to commit, but ought to proceed on the parties recognisance, *Regina v. Weston*, 2 Ld. Ra. 1157. Where sessions can commit, and might have done, that is, unless the party put in security to perform the order, or appear at the next sessions. *Salk. 122. Regina cont. Weston*, Ld. Raym. *ibi supra*.

45. After appeal to the sessions, if the first order is discharged, the matter is *res integra* before the sessions, and they may refer the matter to the two justices, but the first order must be first discharged, for till then, no reference can be made; but as now they have, by 3 Car. 1. c. 4. an original jurisdiction of bastardy at the sessions, it seems better that the sessions should make a final order. *Bulst. 342. Rex cont. Smith*. If at the sessions the order of the two justices is discharged, that party, who by them was adjudged the putative father, is for ever cleared; nor can any subsequent sessions, or justices of the peace, ever charge him

Justices who made the order have no vote at sessions.

Where sessions can commit, and where not.

No reference by sessions, till first order is discharged.

with the maintenance of the child, &c. *Will. Jones* 380. *Priest-geon's Case*, *Cro. Car.* 341, & 350. 1 *Vent.* 159. *Hammond's Case*, *Anonymus*, &c. 2 *Bulst.* 341. *Mich.* 6 *Car.* 1. *Smith's Case*. An appeal from an order of bastardy ought to be the next sessions, unless the party proves that he had not notice till after the next sessions; and it were fit it should appear so in the order of sessions. *Comb.* 448.

A doubt about the quarter-sessions.

46. It has been doubted on the words of the statute, which directs the appeal to be at the next quarter-sessions, whether if the county being large, as *Kent*, and there be two quarter-sessions, one for each division, the appeal shall be to the next quarter-sessions that is held for that division; and also, if the party adjudged to be the putative father be beyond sea at the time the very next sessions is held, whether he may not appeal to the next sessions after his return; and both these questions have been adjudged in the affirmative. 1 *Sid.* 149. 1 *Keb.* 534. *Rex cont. Coyston.* 3 *Keb.* 551. *Rex cont. Baker.*

Sessions cannot commit, for not obeying justices order.

47. The court of quarter-sessions cannot commit one refusing to obey their order, by which that of the two justices is altered, but ought to proceed against the party on his bond. 2 *Bulst.* 341. *The King cont. Hammond*, and 342. *The King and Smith*. An order upon a defendant to keep a bastard, made by two justices, is discharged at sessions; but there they bound him to appear at the following sessions, as supposed, apprehending that better evidence might be found against him. After this the same two justices make a new order upon him to keep this bastard; it was quashed in *B. R.* for he having been once legally acquitted, cannot again be drawn in question for the same fact. *Rex v. Tenant*, 2 *Ld. Raym.* 1423, 1424.

Where the sessions may order the father to pay the charges.

48. If the child dies after order made, pending the appeal, the justices at the sessions may and ought (if they think the person charged by the order of the two justices to be the father) to order him to reimburse the expences the parish have been at in maintaining the child during it's life; but proof must be made of the service of the order.

Where B. R. will quash an order.

49. Though none but the justices have power to adjudge who is the putative father, yet, it seems, if the justices are unreasonable in appointing provision for the child, as if they appoint but 2 *d.* per week, the court of King's Bench will judge of that. 1 *Sid.* 363. 2 *Keb.* 349, 356. *Rex cont. Parkasse*. Though the determination of the sessions is final to the merits, yet, if there be a defect in form, or other fault appears on the face of the order, a *Certiorari* may be brought to remove the said order into the King's Bench, where it will, for such defects, be quashed. An error in part of an order shall not vitiate the whole. *Cro. Car.* 470. *Slater's case*. *Keb.* 534. *Rex cont. Coyston*. When a motion is to quash an order for maintaining a bastard child, the person charged ought to be present in court, to enter into recognisance

ance to abide the order of the justices if adjudged against him. For, if the order be affirmed, he must be committed until he find good security to perform it, &c. *Comber. 418.*

50. Whatever was deficient or misconceived upon the statute of Queen *Eliz.* as to the order to be taken concerning bastard children by justices of the peace, &c. we have now a new statute to assist them in their duty, *viz.*

51. The statute 6 *Geo. 2. cap. 31. for the relief of parishes and other places, from such charges as may arise from bastard children born within the same*, enacts, that if any single woman shall be delivered of a bastard child, which shall be chargeable, or likely to become chargeable to any parish or extraparochial place, or shall declare herself to be with child, and that such child is likely to be born a bastard, and to be chargeable, &c. and shall in either of such cases, in an examination to be taken in writing upon oath before one or more justice or justices, &c. charge any person with having gotten her with child, it shall be lawful for such justice, &c. upon application made by the overseers of the poor, or one of them, or by any substantial householder of such extraparochial place, to issue out a warrant or warrants for apprehending the person charged, and for bringing him before such justice, &c. or any other of such county, &c. who are by this statute authorised and required to commit the person so charged to the common gaol or house of correction, &c. unless he shall give security to indemnify such place or parish, or shall enter in a recognisance with sufficient surety, upon condition to appear at the next general quarter-sessions, or general sessions, &c. and to abide and perform such order or orders as shall be made in pursuance of the act 18 *Eliz.*

52. Provided, that if the woman so charging any person shall happen to die, or be married before she shall be delivered, or if she shall miscarry of such child, or shall appear not to have been with child at the time of her examination; in any of these cases, such person shall be discharged from his recognisance at the next general quarter-sessions, or general sessions, &c. or immediately released out of custody, by warrant under the hand and seal of one or more justices, &c. residing in or near the limits where such parish or place shall lie.

53. Provided also, that upon application made by any person committed by virtue of this act, or by any person on his behalf, any justice or justices residing in or near the limits, &c. such justice, &c. is authorised and required to summon the overseers of the poor, or such substantial householder, to appear before him at a time and place mentioned in the summons, to shew cause why such person should not be discharged; and if no order shall appear to have been made pursuant to the act 18 *Eliz.* within six weeks after such woman shall have been delivered, such justice shall discharge him from his imprisonment.

54. Provided, that it shall not be lawful for any justice to send for any woman before she shall be delivered, and one month after, in order to be examined concerning her pregnancy, or to compel her to answer any questions.

2 Bulst. 348,
349. Justices
may inflict a
corporal punish-
ment. Cases of
bastardy.

55. I shall add a few cases relating to bastardy, and so conclude this head. The two justices may inflict a corporal punishment upon the reputed father, by virtue of *stat. 18 El. c. 3.* but this is very rarely done, unless he is so very poor as not to be able to indemnify the parish. It has even been held that he is not punishable by this statute, unless the child is chargeable to the parish. *Comber. 434.* If the father of a bastard dies poor, the mother must provide for the child, if able; and if an harlot will take the child whereof she is delivered, and suffer it to lie abroad, whereby vermine destroy it, this is murder *18 El. c. 3. 2 Bulst. 250. 21 Jac. 1. c. 27. Crompton 24. 7 Jac. 1. c. 6.*

56. A motion was made at the quarter-sessions to quash an order made, that one should keep his reputed child, because he had kept him heretofore; but it not appearing by the order either that he was his bastard, or his lawfully begotten child, the order was quashed. *Style 154.* If by practice and design a child be born in a parish, the parish where the practice was, shall keep the child. *2 Bulst. 341.* An order for keeping a bastard child was quashed, because the order did not direct how long the party should keep the child. *Mich. 24 Car. 1. B. R. Style 154.* An order of bastardy, not said in the order, the defendant was summoned, or had notice, or was heard. *Curia:* Not requisite where the order is made by two justices; otherwise, had it been originally made at the sessions. So an order for paying so much weekly to a parish towards keeping of a bastard child was quashed, because it did not appear by the order, that the child was born in that parish to which the money was to be paid. *Style 368.*

57. *A.* was ordered by two justices to pay 8 *l.* towards keeping a bastard child, but had no notice of the order 'till the time given him by the statute to appeal to the sessions was past: The court made a rule, that the next sessions in *Middlesex* (where the matter was) should hear the matter, and make an order for the charge or discharge of *A.* and that should be final. *Pasch. 19 Car. 2. B. R. 1 Sid. 326. 2 Keb. 129. King cont. Hill.* An order made without complaint of the parish officers is not good. *Blackerby's Cases 44.* But it was otherwise held in *B. R.* by Lord *Hardwicke*, Ch. Just. and the court. *Hill. 9 G. 2. Ray v. Jenkins.* Two justices cannot order the reputed father to give security for the performance of their order, before he hath made default of obeying that order. *Blackerby's Cases 45.*

58. If a woman conceal the death of her bastard, and do not prove by one witness that it was still-born, it is murder. *21 Jac. 1. c. 7.*

59. Order was, *Whereas a certain woman was brought to bed of a female bastard child in N. and after dropped in S. Cur.* You must either name her, or say a person unknown; and it was quashed. In an order of bastardy not said, one of the justices was of the *quorum*, quashed. *Queen and Knott, and Queen and Cotton, Pasch. 1712.*

60. If the officers are carrying a person by order of removal, and she be delivered on the road *in transitu*, the bastard shall go with the mother whither she was going; and if there be an order made, and before that order can be served, the bastard is born, gains no settlement, but shall be sent with the mother. *Pasch. 1711.*

61. The reputed grandfather of a bastard child is not to be charged, as in case of a legitimate child. *Black. 59.* A bastard was born in one parish, but taken and kept by the reputed father in another, and after 20 years he dies, it is to be kept by the mother, if able. *2 Bulst. 250, 293. Black. 52.*

62. The two justices cannot make an order upon the woman's complaint only. *Black. 63. Cont. per Hardwicke, C. J. supra.*

57. Where quarter-sessions first make an order in bastardy, and afterwards the two justices make one, it is a nullity. *Black. 51, 52.* If the two justices make not a provision for the bastard, the sessions must settle it as the two justices ought to have done. *Jones 330.* An order to pay such charge as the parish had been at, and did not say, that the child was likely to be chargeable, and yet held good. *1 Vent. 37.* Sessions may order a payment notwithstanding the child's death.

63. A man being adjudged the putative father by justices of peace at the sessions, which is by authority of the statute law, it cannot be impeached in the spiritual court, or elsewhere. *Cro. Jac. 625. 2 Sid. 29. 1 Vent. 59. Keb. 546.*

64. The two first and next justices have no power to commit any one for not performing their order, but they are to bind him over to appear at the next quarter-sessions, and may commit for want of sureties. *2 Bulst. 341. Hammond's case.* The recognisance taken, ought to be in the disjunctive, *viz.* to perform the order by them made, or to appear at the next quarter-sessions, and to abide the order there. *2 Bulst. 341, 342.*

65. The parish where a bastard is born, whose father cannot be found, must maintain it. A poor infant is to be maintained by the parish where born, unless they can find that it has another settlement. *Hamlet of Spittlefields v. Parish of St. Andrew, Holmourn, 1 Ld. Raym. 567.* The bare conspiring to charge one with the keeping of a bastard child, though the woman be not with child, nor there be no child really, but only a contrivance to defame the person, and cheat him of his money, is a crime of a very heinous nature, and indictable. *1 Vent. 304. Rex v. Armstrong. 1 Levinz 62. Rex v. Kimberty.*

66. A bastard child is generally to be settled where it is born, but if it be born in a parish to which the mother is removed by an order that is illegal, it will gain no settlement there. *Salk. 121. Westbury and Coston parishes 532. Wood's case, Salk. 532. Carth. 349. S. C.* On motion to quash an order of two justices to remove a woman and her bastard child from *A.* to *B.* where it appeared by the order that the child was born at *C.* By *Holt* Chief Justice, the bastard must be kept where born. *Trin. 10 W. 3. B. R. Inhab. St. Nicholas and Killington parish, 2 Salk. 485.* A single woman was removed from *D.* to *S.* by two justices, thence by two justices to *B.* she voluntarily returned to *D.* and there bore a bastard child. 'Twas said she came to settle contrary to law. *Per Holt*, Chief Justice, they should state the fact, not the law; if any fraud appear in conveying a woman to bear a child, it may be sent back with its mother to her last legal settlement. *Comb. 285.*

67. An order of bastardy under the hands of more than two justices is good (if one of them be of the *quorum*) for the statute is not restrictive to two, but there must be two at the least. *Hatton's case, Salk. 477.* From an order of bastardy the appeal must be to the next general sessions. *Rex v. Shaw, Salk. 482.* but see §. 46. And orders relating to bastard children cannot be quashed, nor excepted to, except the reputed father be present in court. *Rex v. Matthews, 2 Salk. 475. Andrews's Rep. 10.* See above, §. 49. where there is an order by two justices, and the sessions order a reference; resolved, the reference by the justices at the sessions, before they had allowed or disallowed the first order, was illegal. By an order of two justices of the peace, that the defendant *Barebaker* should pay a certain sum of money weekly, till the bastard child should attain the age of 14 years, it was held by the court that the order was naught, because the justices have no power but to save and indemnify the parish, and that is only to oblige the defendant, *Barebaker*, to maintain the child as long as it is, or may be chargeable to the parish. *The King cont. Barebaker in B. R. Salk. 121. S. C.*

Justices cannot order a sum weekly till the child attain a certain age.

Cases of bastardy.

68. If the husband be out of the four seas, during the whole time of the wife's going with child, in that case the child is a bastard; but if the husband were here at all within that time, it is legitimate and no bastard: Besides, it did not appear by the order that the husband was absent all the time; the order was for these reasons quashed. *Mich. 3 Ann. Reg. cont. Manly. Vide 5 Mod. Alinson v. Spence. See Section 1.*

69. In the case between *Budworth* and *Damply*, *Hill. 5 Ann.* it was held, 1st, That an order made upon the overseers of any parish by two justices, for raising a sum towards the maintenance of a bastard, or poor person, does not determine the settlement of that person in that parish, for the right of settlement is not contested, but presumed. 2^{dly}, That the clause in the stat. 13th *Car.*

chap. 37.

Car. 2. c. 12. which provides, that distinct townships of large parishes in the northern counties shall provide for their poor, it be understood with respect to the maintenance of poor and impotent persons, and not with respect to bastards; but if a bastard be grown up, and by accident grow lame or impotent, he shall be relieved as a poor person within that statute. 1 *Salk.* 123. C.

70. Upon a motion to quash an order, the putative father must be in court; the objection was, That the order did not set forth that the child was likely to be chargeable; but adjudged, that it was self evident that bastards are likely to be chargeable. 2 *Salk.*

75. *Rex v. Matthews, sed vide Rex v. Nelson, 1 Vent. 37. con-*
7. If the child dies after the order is made by the two justices, before the next sessions, and no security be given to perform the order, then, when the party appears at sessions, they may order him to pay the charges upon proof of serving the order. But if security hath been given, then the sessions have no further power, but the bond must be put in suit if the condition is not performed. 2 *Bulst. Rex v. Hammond.* The Bond must be made to the churchwardens, &c. and their successors.

71. The constable willingly or negligently suffering the father to escape after he is apprehended by a warrant, one justice may send him over to the sessions, and there he may be indicted. See below, §. 73. So may any person who shall persuade, procure or convey away the reputed father, or who suffers the mother to escape, or conveys her away. But this is not by virtue of any of the statutes made against bastardy, it is only a discretionary act in the justices, which the conservators of the peace had at common law.

72. In the order not said, the child was born in the parish; but by the statute, the justices cannot make an order to compel a parish to contribute towards the maintenance of a bastard child, but in case of that parish where the child was born. *Queen and Mich. 11 Ann. Reg. B. R.* See below, §. 74. The defendant was compelled by the justices to give security by bond, (*Arker, Ch. Just.*) the justices have no such authority; if the party refuses, upon request, they may bind him over to the sessions. *Queen and Ridge, Mich. 11 Ann. Reg. B. R.*

73. A warrant was given to the defendant, being constable, to apprehend one *Jones*, who the woman swore had got her with child; The constable lets him escape: The justices make an order for him to pay 3 *l.* towards the expences the parish have been at, and 1 *s.* per week towards his maintenance, and the mother to pay 6 *d.* per week. Now this order was quashed as to the constable, for the justices have no such authority; good as to the mother, for they have power to charge either the father or the mother. *Queen and Jefferys, Mich. 11 Ann. Reg. B. R.* See above, §. 71.

74. An

74. An order to keep the child until he could gain his livelihood, ill for the incertainty. 2. It does not appear the child was born in the parish, quashed. The parish of *Cuddington* *Pasch.* 1711. See above, §. 72. *Obj.* 1. It does not appear the order that the child was born in the county. 2. Said, examination was taken before one or two of us justices of peace; must be before two. 3. To keep the female bastard when it shall be born, repugnant: How can it be known whether it is a male or female before it is born? But the court has this last objection to be but surplusage, but quashed for the first objections. *Queen and Thorn, Pasch.* 1714. *B. R.* An order made upon the defendant to maintain a bastard child quashed, because though in the complaint it was alledged, the child was born in the parish of *H. &c.* yet there was no adjuration by the justices, nor words of theirs, from whence it could be collected in what parish the child was born. *Pasch.* 10 *Geo.* *Rex v. Godfrey*, 2 *Ld. Raym.* 1363; and in that case Mr. Justice cited *Regina v. Beddington, Pasch.* 10 *Ann.* of such an order quashed for this very exception.

75. Justices in corporations, &c., are to put the acts in execution relating to bastards, as justices in the counties, &c. A woman wrongfully charging a man with getting a bastard upon his body, was committed to the house of correction for life. *13 Car.* 1. The usual punishment for these offenders, is publick whipping, &c. 1 *Vent.* 305.

C H A P. XXXVIII.

Beggars.

Law against
begging in the
streets, &c.

1. **I**T was remarked in the former editions of this book, though the statute of 12 *Ann.* c. 23. which obliged constables to remove beggars, and for a second offence to whip them, was severe enough against begging and beggars, yet it had little effect; which proceeded from one grand mistake that seemed to run through all our laws on this subject, *viz.* the punishing the real objects of charity as criminals, instead of providing help for those who really are not able to work, and workhouses, or at least work for all those who are really able; that act being now repealed by the vagrant act, 13 *Geo.* 2. and some alterations thereby introduced as to the treatment of beggars, both in apprehending them, and disposing of them afterwards, (as before particularised in *Chap.* XXXII.) it is hoped that will be found more effectual.

In the county of *Leicester*, one *Wright*, a lusty young fellow, to make himself impotent, and thereby the better qualified for begging, caused his companion to strike off his left hand, and of them were indicted and fined. *Co. Litt.* 117. *Quære*, whether since the *Conventry Act* this had not been a capital felony in them both.

C H A P. XXXIX.

Certificates.

BY stat. 8 & 9 *W.* 3. c. 30. a poor man has liberty to remove from one parish to another for work, and the better maintenance of his family, by certificate under the hands and seals of the churchwardens and overseers of the poor, or the overseers where there are no churchwardens, acknowledging the person to be an inhabitant legally settled in their parish.

2. This certificate must be attested by two credible witnesses, allowed and subscribed by two justices, and then delivered to the officers of the parish to which the poor man removes, and the poor man shall remain in this parish until he wants relief, when the first parish is obliged to receive and to relieve him again.

Chap. XXXII. §. 22.

3. But by 9 & 10 *W.* 3. c. 11. poor persons coming into any parish by certificate shall not gain any legal settlement, without taking a lease of a tenement of 10 *l.* per ann. or legally put in and executing some annual parish office.

4. And by stat. 12 *Ann.* c. 18. if any person residing in a parish by certificate shall take an apprentice, or hire a servant, such apprentice, or such servant, shall not be adjudged to gain any settlement in such parish, unless the master hath gained a settlement there.

Certificate of a Man's being a Parishioner in a Parish.

To the churchwardens and overseers of the poor, &c.

WE the churchwardens and overseers of the poor of the parish of, &c. in the county of, &c. hereby certify that we own and acknowledge A. B. labourer, and E. his wife, to be inhabitants legally settled in our said parish of, &c. And we hereby promise for ourselves and successors to receive them in our said parish, whenever they shall become chargeable. In witness
whereof,

whereof, we the said churchwardens, &c. have hereunto
tively set our hands and seals, &c.

Witness,
J. M. Rector,
S. L. &c.

L. P. }
C. D. } Churchwardens
N. O. }
T. W. } Overseers.

We whose names are hereunto subscribed, two of his majesty's
stices of the peace of and for the county of, &c. do allow of
above certificate.

Witnesses who
attest certificates
must make oath,
&c.

6. By a stat. 3 Geo. 1. c. 29. it is enacted, that the witness
who attest the execution of certificates of settlements by
churchwardens and overseers, or one of them, shall make oath
before the justices, who by the act 8 & 9 W. 3. c. 30. are
directed to allow the same, that such witnesses did see the church-
wardens and overseers severally sign and seal the said certificate
and that the names of such witnesses are of their own hand-writ-
ting; and the justices shall also certify, that such oath was made
before them; and every such certificate shall be allowed in
courts as duly and fully proved, and be taken as evidence with-
out other proof.

On removal,
parish to be re-
imbursed their
charges.

7. When any overseers of the poor of any parish shall re-
back any persons and their families sent thither by certificate
and becoming chargeable, the overseers shall be reimbursed for
reasonable charges as they have been put to in maintaining and
removing such persons, by the churchwardens or overseers of the
parish to which such persons are removed; the charges being first
ascertained by one or more justices of the county to which such
removal shall be made, which charges so ascertained shall, in case
of refusal, be levied by distress and sale of the churchwardens and
overseers goods, returning the overplus; which warrant the jus-
tices are required to grant.

Travelling poor
are to have cer-
tificates.

8. By 13 & 14 Car. 2 c. 2. persons in time of harvest,
any time to get work, may go into any county, parish or place
so as they carry with them a certificate from the minister of the
parish, and one of the churchwardens and overseers of the poor
that they have a dwelling in their parish, and are inhabitants
there; and such persons are to return to their own parishes when
their work is finished, or a justice of the peace may send them
to the house of correction, to be punished as vagrants; and
such persons fall sick, &c. two justices of the peace may order
them to be conveyed back to the place of their habitations.

9. Churchwardens or overseers refusing to receive such per-
sons, &c. are to be bound over to the assizes or sessions, and there
be indicted and punished.

10. When

Where a poor man comes into a parish with a certificate, cannot be removed, unless he is actually chargeable to that parish; for it is not enough to say, that he is likely to be chargeable.

In what case a certificate man cannot be removed.

Par. *Little Kire and Woolfall*, 1 Salk. 530. *Cases of*
Ann. 64, 65. The Queen v. Whiten.

It is now held, that where a parish gives a certificate attested to a poor man, owning him to be a parishioner, though he be not really so, yet are they concluded and estopped, only against the parish to which the certificate is given, but against all other parishes whatsoever; for certificates are so-
 Certificate binding against all the world.

acknowledgments that the person is legally settled with; and as all other parishes are bound to receive him, so that which certified is concluded as to all other parishes whatever; for it is in nature of an adjudication; it is signed by the proper officers, and allowed by two justices who are proper persons, and who, upon less evidence, could have adjudged it a settlement. 3 Salk. 535. But see Par. *All Saints and St. Giles*, 1 Salk. 530, 531. *Inhab. Honiton and St. Mary Axe*, 535. where it is said the reason of the act of parliament about certificates, was only to encourage parishes to receive poor persons who were not likely to be removed; therefore it enacts, That when the poor person shall be chargeable, the parish which gave the certificate shall provide for him, &c. These words oblige that parish against which the certificate is given; but as to all other parishes, they are as they were before.

Adjudged, that where a poor man, who hath a lawful settlement in one parish, comes into another by certificate, and gains a settlement there, he shall not afterwards be sent back to the parish certifying. 3 Salk. 253. An order for the removal of a certificate person must be grounded upon a complaint, that the person is actually chargeable; the adjudication must be, that he is chargeable; and for want of this the order was quashed.

Certificate man gaining settlement cannot be removed.

12 Annæ, *Willerton and Waddington parishes*. Mich. 2. *The King against Shifstead Inhabitants*. The question was whether the child of a certificate person can gain a settlement by service? The service was in the same parish. *Curia*: gained no settlement by such service. Easter 15 G. 2. *Parish of Sherborn*. A certificate person gains a settlement by purchase.

Hil. 16 G. 2. *The King against Stansfield Township*. by renting a cottage of 3 l. a year, and a windmill of 14 l. Trin. 10, 11 G. 2. *The King against Butley Inhabitants*, *News's Rep.* 3. One was bound apprentice to a certificate person and assigned by him to another who lived in another parish, where the apprentice went and lived accordingly. He gained a settlement by the assignment and service. Mich. 14 G. 2. *Dun-*

staple and Pettam Parishes. If a certificate woman afterwards has a bastard, the bastard is settled where born, notwithstanding the certificate. Trin. 19 G. 2. *The King against Hipperholm In-*

habitants.

habitants.

bitants. If a certificate be given for a man and his wife, the parish who gives it is concluded, though she be not legally his wife and he has a former wife living. And such parish shall be obliged to receive him and his pretended wife, and all children he has by her, though bastards, and though the children be by his first wife are become a charge upon them. *Trin. 20 G. The King against Hedcorn Inhabitants.*

C H A P. XL.

Cotages for Poor.

Method of erecting cotages for poor.

1. **B**Y 43 *Eliz. c. 25.* cotages may be erected on the waste and commons, at the charge of the parish, for poor impotent persons, by the churchwardens and overseers of the parish or the greater part of them, having obtained leave of the lord of the manor in writing under hand and seal, and procured an order of sessions for confirming the same; and if the lord of the manor will not give consent, the sessions alone may tolerate a cotage at a particular time. Inmates and more families than one may be placed in these cotages.

2. The power given to the justices by this statute extends only to habitations for such poor as are impotent; and if it does not appear on the face of the order, that the person was impotent as well as poor, the order is ill. 2 *Keb.* 744. *Rex cont. May.* *Rex cont. Grat.* 2 *Keb.* 643. *Rex cont. Payne.* 5 *Mod.* 397.

A Petition to Justices in their Sessions, for an Order of Sessions to erect a Cotage.

To the worshipful the justices of the peace, at the general quarter-sessions of the peace, holden at, &c. on, &c.

The humble petition of *A. B.* of, &c.

Sheweth,

3. **T**HAT whereas your petitioner being very poor and impotent, and with his wife and children settled as a inhabitant of and in the parish of, &c. and at present destitute of habitation, hath by address made to *T. W. Esq;* lord of the manor of, &c. obtained his consent under his hand and seal, for your petitioner to erect and set up a cotage on the waste within the parish of, &c. aforesaid, for an habitation for himself and his family

order of sessions can be obtained for confirmation thereof, as the paper hereunto annexed doth appear;

May you therefore be pleased to grant unto your petitioner the order of this court, whereby your said petitioner may be enabled to set up a cotage for an habitation for himself and poor family, on some convenient place, on the waste within the manor of, &c. aforesaid.

And your petitioner shall ever pray, &c.

The Lord's Consent to the Erecting a Cotage.

UPON the petition of A. B. and the certificate of the inhabitants of the parish of, &c. for erecting a cotage in parish of, &c. I (being lord of the manor of, &c. aforesaid,) do hereby give my consent, that the said A. B. shall and may erect and set up a cotage for the habitation of himself and family in some convenient place, on the waste within the parish aforesaid, to be viewed by my steward; provided an order of sessions may be procured according to law for confirmation thereof. Witness my hand, &c.

An Order of Sessions for erecting a Cotage.

At the general quarter-sessions of the peace, &c. holden at, &c.

Berks, ff. **W**Hereas A. B. of, &c. labouren, is poor and impotent, and hath obtained consent of C. D. lord of the manor of, &c. in the county aforesaid, to erect and set up a cotage for an habitation for himself and family in some convenient place, on the waste in the parish of, &c. aforesaid; provided an order of sessions be procured for the confirmation thereof: and the said A. B. having humbly petitioned, and besought us to grant such an order; we do therefore hereby order and give our consent, that the said A. B. shall and may erect and set up a cotage for the habitation of himself and family, on some place in the waste in the parish of, &c. aforesaid, according to his petition, and consent of the said C. D. By order of the court, &c.

The money for building these cotages at the publick charge the parish, may be raised by a tax, as before directed, &c.

C H A P. XLI.

Families left on Parishes.

Justices may
commit a man
running away
and leaving his
family to the
parish, &c.

In what cases
parish officers
may seize ef-
fects, &c.

1. **B**Y stat. 7 *Ja. c. 4. §. 8.* where any person, able to labour, shall run away from the parish, and leave the families behind them, they shall be deemed and be taken to incorrigible rogues, and endure the pain of incorrigible rogues. And if any man or woman able to work shall threaten to run away and leave their families upon the parish, the same being proved by two witnesses before two justices, the person so threatening shall be sent to the house of correction, &c. unless sufficient security be given for the discharge of the parish.

2. And by 17 *Geo. 2. c. 5.* persons who threaten to run away and leave their wives and children to the parish, on conviction before one justice by confession, or oath of one witness, shall be committed to the house of correction for any time not exceeding one month. But see *chap. XXXIII.*

3. By stat. 5 *Geo. 1. c. 8.* where any wife, child or children shall be left upon a parish, the churchwardens or overseers of the poor, upon application to, and by warrant from two justices of the peace, may seize so much of the goods and chattels, and receive so much of the rents and profits of the lands and tenements of the husband, father or mother of such wife or children as the justices shall direct for the discharge of the parish, in providing for such wife or children; which warrant being confirmed at the next quarter-sessions, the justices at the quarter-sessions may make an order for the churchwardens or overseers to dispose of the goods or chattels by sale, and to receive the rents and profits of the lands and tenements, or so much of the same as they think fit, for the purposes aforesaid, and the churchwardens, &c. are to be accountable to the justices in sessions, for such money as they receive.

4. But then it seems but reasonable, that the party in whose hands the money is, should not be bound by this statute, unless he has notice of this warrant; and such notice should be given before the warrant is confirmed by the sessions, that the party may there appear, and if he can shew cause against it.

Commitment of a Person for running away and leaving his Family on the Parish.

To the keeper of the gaol of, &c.

Berks, ff. **W** Hereas A. B. and C. D. overseers of the poor of the parish of, &c. have made information on oath before us, two of his majesty's justices, &c. that J. K. of, a person able to work and maintain himself and his family, did &c. last past run away from their parish aforesaid, and leave family upon the said parish, contrary to the acts of parliament that case made: These are therefore in his majesty's name to command you to receive the said J. K. into your custody, and him safely keep, until he shall be delivered by due course of law. Given, &c.

6. If justices of peace in sessions make orders for parishes to provide houses, or to give any persons maintenance who are not potent, but able to work, or having any thing to live upon, the orders are against law.

Order of Sessions to receive Rent of Lands to discharge a parish where a Child is left.

W Hereas A. B. and G. D. esquires, two of majesty's justices of the peace for the county of, &c. upon complaint made by E. F. and G. H. overseers of the poor of the parish &c. in the said county, that L. M. a child of the age of about years, was last legally settled in the said parish of, &c. and has been left there by her mother E. M. who is gone away, and the father of the said child being dead, the said child had been, was likely to continue chargeable to the said parish, which the justices upon examination adjudged to be true: And it appeared to them that the said E. M. was intituled to, in her own right, possessed of, one annuity of 10l. a year, given her for life, &c. which is, and has been, paid to her quarterly, by, &c. the justices of the peace, upon application to them made by the said overseers of the poor, did by order under their hands and seals, bear date, &c. order and direct that the said, &c. or any other person that shall be intrusted or appointed to pay the said annuity at time or times hereafter, should pay, or cause to be paid, into the hands of the said overseers of the poor of the said parish of, &c. for time being, or one of them, so long as the said child shall continue chargeable to the said parish, the sum of 5l. a year, part of said annuity of 10l. a year, for and towards the discharge of said parish, for the bringing up and providing for the said

P

L. M.

L. M. and further ordered the said overseers of the poor to take and receive the same accordingly, (pursuant to an act of parliament made in the fifth year of the reign of his majesty king George the first, intituled, An Act for the more effectual relief of such widows and children as are left by their husbands and parents upon the charge of the parish) this court, upon reading the said order, produced by the said, &c. overseers of the poor of the said parish, do confirm the same: And pursuant to the direction of the said act, do also order, that the said overseers of the poor of the said parish and their successors, for the time being, do take and receive the sum of 5*l.* a year, part of the said annuity of 10*l.* a year, out of the rents and profits of the lands and tenements charged with the payment of the said annuity, for and towards the discharge of the said parish for the bringing up and providing for the said L. M. as aforesaid, and that the said overseers and their successors be accountable to his majesty's justices of the peace for the said county, at their quarterly sessions, for all such money as they, or any of them, shall receive in virtue of the act aforesaid.

C H A P. XLII.

Houses of Correction.

Statutes about
houses of cor-
rection.

1. **T**HE statutes concerning houses of correction are 7 Jac. 1. c. 4. 14 Geo. 2. c. 33. 15 Geo. 2. c. 17 G. 2. c. 5. & 24 G. 2. c. 40. By 7 Jac. 1. c. 4. 'tis enacted that in every county there shall be a house of correction to be built with all conveniences for the setting of rogues and idle people to work, or every justice shall forfeit 5*l.* one moiety to the prosecutor, and the other towards building the house; and the houses, when built or purchased, shall be conveyed to persons appointed by justices in sessions, in trust to be employed for the keeping, employing and correcting persons sent thither, and the justices in sessions are to appoint governors or masters of the houses of correction, and their salaries, and for the relieving the weak and sick in their custody; which are to be paid quarterly, beforehand, by the treasurer out of the county-stock, the said masters or governors giving sufficient security for the performance of the said service. *Ibid.*

2. Those governors are to set the persons sent on work, (being able) and moderately to correct them by whipping or flogging them if unruly, and are to yield a true account every quarter of sessions of persons committed to their custody; and if they do not yield such account, or any person committed to their custody

shall be troublesome to the county by going abroad, or otherwise escape from the house of correction, before lawfully delivered from thence, the justices may fine such governors at discretion, which fine is to be paid to the treasurer of the county.

3. The house of correction is for the punishing of the poor who refuse to work, who are to be there whipped and set to work.

Bulst. 358. And any person who lives extravagantly, having visible estate to support himself, may be sent to the house of correction, and set at work there, but not whipped, and may be continued there until he give the justices satisfaction in respect to living. *Sid. 281.*

4. The money to erect workhouses, &c. is to be raised by a rate on the inhabitants, and on all lands, &c. and so likewise is the money needful for the maintaining of the poor in the said workhouses, so as the same exceed not what hath been usually paid for maintenance of the poor.

5. Rogues, vagabonds, &c. may be sent by one justice to the house of correction, there to be kept to hard labour with moderate whipping, but shall not be chargeable to the county for any allowance, either at their bringing in, or going out, or during their abode there, but shall have so much allowance as they shall deserve by their own labour. And by 15 *Geo. 2. c. 24.* persons liable by law to be committed to the house of correction, apprehended in any liberty, city, or town corporate, whose inhabitants are contributory to the house or houses of correction of the county, riding or division, in which such liberty, &c. is situate, may be committed by the justices of such liberty, &c. to such house of correction of the county, riding or division.

6. And by 17 *Geo. 2. c. 5.* upon presentment of the grand jury at assizes, great session, or general gaol delivery, and at general or quarter sessions where there is no assizes, for any county or liberty, that there is no house of correction, and that it will be necessary to provide one or more, &c. or that the house, &c. already provided is not sufficient, and that it will be necessary to provide, &c. the justices in sessions, may build, or enlarge, or purchase a house, &c. with convenient backside, &c. or land, and erect such house, &c. upon part, and lay out the rest for back-side; and may raise such money, as, upon examination of able and sufficient workmen, or other persons, appears to be necessary for these purposes, and may buy houses or land for such purposes, to be conveyed to such persons as sessions think fit, in trust, &c. And they are to take care that houses of correction

Houses of correction, how to be built, &c.

be duly fitted up, furnished, and supplied with sufficient implements, materials, and furniture, for keeping, relieving, setting to work, employing, and correcting all idle, &c. sent, confined, or continued there: And two justices in the hundred, or appointed by the sessions, are to visit twice or oftner in a year, inquire, and

Furnished.

Inspected by justices.

report at sessions, in order to amendment, &c. Justices in sessions are to have the like power over future houses of correction over the present; and may fine the governors as by *stat. 7 Jac.* to be paid to the treasurer, and be part of the county stock; and may appoint and remove governors or other officers; and may make orders and regulations for the better governing and regulating the said houses, and for employing, relieving, and punishing the persons there, or sending them thence; which orders shall be final to all intents and purposes, and no *certiorari* shall be granted for the removal of the same. If any person removed refuses or neglects to quit possession for ten days after notice given in writing by clerk of peace, two justices (upon production to them such order of sessions, or an attested copy, and upon oath by one credible witness of notice given, and of refusal, or neglect to quit possession) by warrant under hands and seals may direct the sheriff to remove, &c. as upon a writ of *Habere facias possessionem*. Stat. 17 Geo. 2. c. 5.

Justices to order
the treasurer to
pay.

7. The justices at general or quarter sessions, or major part of them, are to cause such sums of money as are necessary, to be paid by the treasurer out of the money raised by virtue of an act 12 Geo. 2. for the more easy assessing, collecting, and levying county-rates; to defray the expences of apprehending, passing, conveying, and maintaining rogues, &c. and of erecting, purchasing, enlarging, altering, and repairing houses of correction and of purchasing land to erect them upon, and for back-sites and out-lets; and of fitting up and furnishing them; and of sending persons to and from the same, and employing them there, and for all other expences necessary for the execution of this act not before provided for. The rest of this act is abstracted Chap. 33. of *vagabonds*, stat. 17 Geo. 2. c. 5. Where authority is given to commit offenders to the house of correction out of sessions, and the time and manner of their punishment has not been appointed, the commitment shall be to the house of correction there to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law; and two justices (of which he who committed the offender to be one) may discharge the offender before sessions, if they see cause; and if not so discharged, the sessions may discharge, or continue him not exceeding three months. 17 Geo. 2. c. 5.

8. By 24 Geo. 2. c. 40. no spirituous liquors shall be sold, given away, or used in, or brought into any house of correction by the keepers thereof, or others, under the penalties in the act mentioned.

Commitment of a Person to the House of Correction.

To the keeper of the house of correction, &c.

R Ecieve into your custody the body of A. B. an idle and disorderly person, as appears upon oath, (or, as appears by own confession, as the case is) and keep him to hard labour for space of ten days from the date hereof. Given, &c.

7 Jac. 1. c. 4.
Two justices.
Co. 2 Inst. 7, 8.

By stat. 14 Geo. 2. c. 33. §. 2. reciting part of the vau-ond act 13 Geo. 2. for building houses of correction, it is en- ed, That majority of justices in general or quarter-sessions, ere no assizes, great session, or general gaol-delivery, are held) y, upon presentment of grand jury, repair or enlarge house of rection, or build, or purchase land to build, &c. and for back- or out-let, as might be at assizes, by 13 Geo. 2.

C H A P. XLIII.

Licences.

TWO justices of peace may license poor diseased persons to travel to the Bath for remedies, so as they are pro- of relief in their travel, and do not beg, 39 El. c. 4. Dalt. Whether justices can license people to beg, &c.
1 Jac. 1. c. 25. for I do not find that any one or more ju- of the peace may or can license a man to beg, or ask relief, pt only that they may make a testimonial, or licence, in the following cases, viz. 1. To such as suffer shipwreck; and, To soldiers or mariners coming from the seas to pass from e to place, and in these two cases the law tolerateth them to and receive necessary relief, as aforesaid.
Likewise poor prisoners delivered out of gaol may in no s beg, by 39 El. c. 4. Dalt. 209.
Though I have been informed, that some justices of peace he county do frequently grant licences under their hands to ons whom they think objects of charity, to go about and beg, ask relief; but this is a practice directly contrary to law.

C H A P. XLIV.

Maintenance of the Poor.

Cases of main-
taining poor per-
sons.

1. **B**Y *stat. 43 Eliz. c. 2.* every parish shall keep their poor and on this statute removals of poor are made; for unless the poor are removed to their own parishes, every parish cannot maintain its own poor.

2. If a travelling woman, having a small sucking child, shall be apprehended for felony, and sent to the gaol, and be afterwards arraigned and hanged, this child is to be sent to the place of birth, there to be maintained, if the same can be known; otherwise it must be sent to the town where the mother was apprehended. If a man and his family be illegally thrust out of parish, and during that time he shall have a child born, he may be returned to the place where he was last legally settled, and the child with him, to be maintained there. *Dalt. 165.* 1 *Salk. Wood's case, Inhab. Westbury and Costham, 121, 122.*

3. If justices of peace in sessions make order for parishes to provide houses, or to give any persons maintenance, who are not impotent, but able to work, or having any thing to live upon, those orders are against law.

4. A father, grandfather, mother, or grandmother, and husband of the grandmother, (being of sufficient ability) are to maintain and relieve their children, which are accounted impotent poor, as the sessions shall order, under the penalty of 20s. per month. *43 El. c. 2.* By the common law, as well as by the law of nature, the father is obliged to provide for his wife and children. *Waltham v. Sparkes, 1 Ld. Raym. 41.* But if the husband of the grandmother have no means or advancement in marriage with her, he shall not be obliged to keep the child. 2 *Barr. 345, 347.* The husband of the grandmother having means, his being of ability after marriage, will not make him liable for maintenance of the child, unless the grandmother had means sufficient; but if after marriage lands descend to such grandmother and the husband enjoys them in her right, he shall be bound to keep the child. *Comb. 321, 405.* A bastard child is out of the statute, and to be provided for otherwise. A father has been ordered to allow maintenance to the son's wife, he being beyond seas, and a father-in-law been adjudged within the meaning of the act *43 El. c. 2.* *Style 183.* Children of poor, old, impotent persons, or others not able to work, are at their own charge to relieve and maintain them, (in like manner as parents are to relieve their children) if such children are of ability, under the penalty of 20s. per month, to be levied by distress and sale, &c. *per stat. 43 El. c. 2.* An order for the husband and wife to maintain

in his wife's mother was quashed, because he is not within the statute, and the wife cannot be of ability, because her estate is a gift to her husband, and he is a purchaser for a valuable consideration. *Fortescue* 303. And the court said it would be inconvenient if the wife should have children by a former husband. *irin. 5 Geo. 1. The King against Munday, Fortescue* 303. A father-in-law does not seem obliged by law to maintain his daughter-in-law, *Rex v. Benoit, 2 Ld. Raym. 1454.* but in this case it is not said what father-in-law; nor if he was the husband of the mother, whether he had a sufficient estate by her. Neither did any counsel appear in defence of the order.

5. For the better relief of poor impotent persons, and to prevent the imposition of churchwardens and overseers of the poor, the parishioners of every parish are yearly in *Easter* week, or as often as it shall be thought convenient, to meet and examine the register book of the poor, and the reasons of their taking relief, &c. and to alter the list as they shall see occasion. *Stat. 4 W. & M. c. 11.*

6. Though the wife had a legal settlement before her marriage, yet it is lost by the marriage, and she thereby acquires a settlement with her husband, and his death will not alter it. And the birth of legitimate children does not gain them a settlement, except where the settlement of their father and mother is not known, and then only till it is known, and no longer. *Mod. Cases in Law and Equity* 169, 170. between parishes of *St. Giles in Reading* and *Eversly* and *Blackwater*. A journeyman tradesman lodges in *A.* and works in *B.* the working does not gain a settlement in *B.* *The King v. Hamlet of Spittlefields, Mod. Cases in Law and Equity* 308, 309. But it has been held, that where he works and has board-wages, he will gain a settlement by his service, though he lies in another parish. *Ibid.* 369, 370. *White-chapel* parish's case. See more in *Cb. Settlements*.

7. An order of removal was quashed, because it did not aver the place of the last legal settlement; but recited, that they were credibly informed, &c. Note; *legal settlement* and *last legal settlement* are the same thing. *Trowbridge v. Weston, 2 Salk. 473.*

8. *John Buncher* rented about 30*l.* a year at *Woodend*, and dwelt there several years, and died insolvent, leaving a widow and one daughter; the widow removed to *Paulspury* into a tenement of 40*s.* a year, and land of about 10*l.* a year, being copyhold, and her own estate for life, and took her daughter with her, then about the age of fourteen; the daughter lived with the mother about two years at *Paulspury* in the tenement, but the mother let the land to a tenant. Two justices held the daughter's settlement to be at *Woodend*, and upon an appeal their order was confirmed at sessions. But both orders were quashed in *B. R.* *Hill. 13 Geo. 1. Inhab. Woodend in Par. Blakeley in Com. North'ton v. Inhab. Paulspury in eod. Com. 2 Ld. Raym. 1473.*

Ec. Note; That case was so determined in *B. R.* upon the authority of the following case: *John Lloyd* was last legally settled at *St. Catharine's* near the *Tower*, and there died, leaving *Lydia* his widow, and six children between the ages of three and sixteen years; after his death the widow and six children went to live in the parish of *St. George, Southwark*, where she took a house of 12 *l.* a year, lived there four months, paid the *Queen's tax*, but no other rent to her landlord. None of the children had of themselves gained any settlement. Two justices of *Surry* had by an order sent them to *St. Catharine's*, and the sessions of *Surry* confirmed this order upon an appeal; but both orders were quashed in *B. R. Mich. 1 Geo. 1.* cited at large 2 *Ld. Raym. ubi supra.*

C H A P. XLV.

Orders of Justices about Poor.

Rules for drawing orders about poor.

1. **I** Shall here present the reader with such rules as I meet with in our books concerning the drawing of orders. The order must say, last legally settled; for by law the place which the poor were last legally settled at, is the place which is to provide for them. *Trin. 5 Ann. B. R.* It is not sufficient to say, the order was made on due notice, without adding, (on complaint of the churchwardens and overseers of the poor of the parish) and though on a *certiorari* it was returned to be so, yet the order is the record, and the return cannot make a void order good. *Mich. 9 Ann. inter Paroch. de Northbury and Shugford, and Pasch. 6 Ann. Regina cont. Parochias de Langley and Goring, 5 Mod. 149. Rex cont. Inhabitants of Wooten Rivers.* If in an order of removal, no complaint be set out, it will be quashed, for that is the foundation of the justices jurisdiction. *Hil. 12 Geo. 2. The King and The Inhabitants of Hareby, Andrews's Rep. 361.* If by the order it doth not appear that one of the justices is of the *quorum*, the order is naught; for two justices, unless one is of the *quorum*, have no authority to remove a poor man. *5 Mod. 321. The Inhabitants of Childingfield or Chittingston cont. The Inhabitants of Penthurst, 2 Salk. 473, 474. Comb. 200, 400.* By the stat. 26 *Geo. 2. c. 27.* No act, order, adjudication, warrant, indenture of apprenticeship, or other instrument, already made, done or executed, or hereafter to be made, done or executed by two or more justices of the peace, which doth not express that one or more of them is or are of the *quorum*, shall be impeached, set aside or vacated for that defect only. Where two justices ought to make and sign an order, it will

be naught if they sign it not being present together. *Walter Rumbal*, 1 *Ld. Raym.* 55. An information was prayed against a justice of peace, and two other justices, for that he alone took an examination in order to make out an order of removal, and that the two other justices signed the order, upon his sole examination, and without summoning the party, (who was a person of substance) and demanding security. The whole court were clearly of opinion, that there ought to have been a joint examination, and by the same two justices who signed the order, being an act of judgment. And by unanimous consent an information was granted against *Wykes*; and this principally, because it was not said in the complaint, that the party was likely to become chargeable, which is the very point that gives the justices jurisdiction. An information was also granted against the other justices (the chief justice dissenting) for returning a false verdict, and so endeavouring to impose on the court; the order reciting that a complaint had been made, and the party examined before them upon oath, &c. which was not true, and also for not summoning the party. *Trin. 1738. The King against Wykes and others. Andrew's Rep.* 238.

2. The order must contain an adjudication of the last legal settlement of the party. *Pasch. 6 Ann. Regina cont. Paroch. de Angley & Goreing.* An order for keeping a poor woman, though it was alledged that it was uncertain in what parish she resided, nor said, that she was impotent, yet refused to be quashed. *Keb. 37. Kilbeck's case.* An order for the removing one because he might become chargeable to the parish is ill, because it states a bare possibility, and no probability; it ought to be, because the party is likely to become chargeable to the parish. *Presley 54. Mod. Cases* 163. *Regina cont. Inhabitants of Newnham.* An order only said that the justices were informed by the assessors, that *A. was likely*, &c. but there was no adjudication that *A. was likely to become chargeable*, &c. *Per Cur'*, it is not necessary. *Inhab. Par. Kingston Bowsey v. Inhab. Beddingham Suffex*, 1 *Ld Raym.* 513. If the order do not set forth the names of the justices at the time of their making, though the order be confirmed on appeal, yet it is naught, because though they might be justices at the time mentioned in the order of confirmation, they might not be so at the time when the first order was made. *5 Mod. 322. Parish of Walton cont. Parish of Wykefield.*

3. An order for the removing of a poor person to a place, which the order rehearses to be, as the justices are informed, the place of his last settlement, is not good, unless it says, the information is on oath; but if on appeal the order is confirmed, it is good. *5 Mod. 525. Parish of Towbridge cont. Parish of Tewkesbury.*

Exceptions to
orders, &c.

4. An exception was taken to an order for settling a man, that he did not rent an house of 10*l.* per annum. *justice*: That most of the orders since 13 *Car.* 2. have been so; and though it might have been better if it had been so; ded, that he was likely to become chargeable to the parish, since the precedents have been so, we will not alter it. then another exception was, that it was not said in the order there was a complaint made by the churchwardens; and that was fatal, for the justices of peace cannot remove a man without it; and though it is said in this order, that complaint was made yet since it is not said by the inhabitants or churchwardens of the parish, it is ill. Let the order be quashed. *Mich.* 7 *W.* 3. *B. R. Rex* cont. *Inhab. de Marlborough*, *Salk.* 492.

Sessions have no
jurisdiction but
by way of ap-
peal.

5. Where an order is made for the settlement of a poor person, and an appeal thereupon to the sessions, the sessions may affirm or quash that order; but they cannot send such person to a third parish, who are no parties to the appeal. *Inter Inhabitants of Oswel and Woking*, *Pasch.* 8 *W.* 3. *B. R. Salk.* 474. *Comb.* 396, 401. A settlement, by order of sessions upon an appeal, binds all parties; and if a poor family, after such order, return to the parish from whence removed, the sessions must see their order obeyed; but if such poor family go into another parish not concerned in the appeal, then two justices of peace ought, by an original order, to remove them to the parish where they were settled by the sessions order. *Inter Inhabit. Downhead and Broadbalk, Hill.* 9 *W.* 3. *Salk.* 481, 482.

6. Where two justices of one county send a poor person to a parish in another county, two justices of the county whither the person is sent, cannot make an order to remove him back again or to send him to any other place; and the town, to which the person was sent, has no other remedy than by appeal to the sessions of that county from whence the party was sent. *Inter Inhabit. King's Norton and Swolnbil, Hill.* 9 *W.* 3. *Salk.* 488. An order of removal made by two justices was set aside by an order of sessions, and after that two other justices made an order for removal of the paupers from the place to which they were sent by the original order; to which it was objected, that after the appeal they had no power in the case, their jurisdiction being thereby wholly determined. The only way being to serve the churchwardens with a copy of the preceding order. This objection admitted to be right by the counsel on the other side. *Michaelmas* 1737. *Andrew's Rep.* 73. A general order to remove a man and his family is not good. *Salk.* 482. *See son's case*, 485. *Vide Chap.* LIII. §. 49.

A general order
to remove a man
and his family
is not good.

7. Where the first order is naught, no subsequent order on appeal can make it good. *Mich.* 10 *W.* 3. *B. R. Anonymous*. The same resolution, *Trin.* 2 *Ann.* *inter Selen and Ripley*, *Salk.* 482. An order drawn up to have the opinion of the court concluding, And if the court should be of opinion, &c.

ap. 45.

- to be right. *Ibidem.* The examination of the person must be recited in the order to be by both justices, (because the adjunction ought to be by both) or the order is naught. *Inter Swanscomb and Hamstead, 12 W. 3. B. R. Salk. 488.* It ought to appear in the order, that the person removed is a person removable. If it be recited, that *wheritas complaint hath been made to us, that A. is likely to become chargeable*, it is naught; if it be said, *whereas it appears to us upon complaint, &c. that A. is likely to become chargeable*, it is well enough. *Sadcomb and Burwash Onk, Salk. 491.*
8. Where an order is confirmed, or not appealed from, it is conclusive to all the world; but where an order is reversed by the sessions, such reversal only determines that the place the party was sent to was not the place of his last legal settlement. *Inter Swanscomb and Shenfield, Pasch. 1 Ann. B. R. Salk. 492.* Where the sessions made an order, and in the same sessions vacate by a subsequent order, it is held to be well enough; for the sessions is all deemed but one day, and the justices may alter their judgments at any time while it continues. *Inter St. Andrew's Holbourn and St. Clement's Danes, Mich. 3 Ann. B. R. Salk. 494, 606.* The sessions need not set forth the reason of their judgment. *Inhab. South Cadbury and Bradon, Salk. 607.*
9. An order reciting a complaint, that a certificate-man is to become chargeable, is not good, unless he is adjudged by the justices (in the order) to be actually chargeable. *Inhab. Malden and Fletwick, Salk. 530.*
10. Justices who make orders must be said in such orders, to be justices of the county, and to say, residing in the county, is not sufficient, but they need not be of the division. *Salk. 474. Rex v. Dobbyn, 480. Eliz. Asbley's case.* Where authority is given to two justices to do any act, the sessions may do it in all cases, except where an appeal is directed to the sessions. *Rex v. Inhab. Boughton, 1 Ld. Raym. 426.*
11. An order was made at the sessions, that a man should maintain his daughter, and allow her 1 s. 8 d. a week for her subsistence: The order was quashed, because it did not appear by the same that she was unable to work, or that she was sick, aged or impotent, which the statute requires. *13 W. 3. B. R. Mendoza's case. Vide Chap. L. §. 8.*
12. At the quarter-sessions an order was made for the relief of poor prisoners in gaol, and providing materials to set them at work, upon the *stat. 14 El. c. 5. and 19 Car. 2. c. 4.* whereby a sum was assessed on the several parishes, not exceeding what was allowed by both acts; but the order was quashed, because the justices ought to have made distinct orders upon the different statutes. *Inhab. Eatonbridge and Westram, Salk. 487.*
13. An indictment for not obeying an order made on 43 *El.* was quashed, because the order was only said to be made at the general quarter-sessions.

Authority given
to justices must
be exactly pur-
sued.

the quarter-sessions, and not at the general quarter-sessions; the 43 *El. c. 2.* appoints orders in these cases to be made at the general quarter-sessions. *Rex v. Turnock, Salk. 474.* 5 *Mod. 329.* Authority given to justices of the peace must be exactly pursued, and so it ought to appear in their orders and determinations; and orders of justices being judicial acts, are not absolutely void in themselves, but voidable, and continue orders avoided. *Inhab. Chittington and Penhurst, 2 Salk. 475.* *Mod. 321.*

14. The order of two justices not appealed from, binds the parish upon which it is made, till a new settlement is gained. An order reversed is final only between the parties; but an order confirmed, or not appealed from, is final to all the world. The sessions may alter their own orders the same sessions: And the sessions hath power to affirm or quash, and not supersede, suspend an original order of two justices relating to the removal of a poor person, &c. *Inhab. Osweal and Woking, Salk. 47.* *Swanscomb and Shensfield Par. 492.* The party removed may appeal to the sessions from the order of two justices, for his removal, although the latter parish does not appeal. So resolved between *The King and The Inhabitants of Hartfield, B. R. Callow 222.* It is a standing rule in the court of King's Bench that if upon an appeal, the order of the two justices is either affirmed or quashed, upon the merits of the case in relation to settlements, it shall be conclusive between the two parishes. *Pasch. 10 Ann. Bishop Waltham cont. Foram.*

Order of sessions
final, unless er-
ror in form of
proceeding.

15. *Term Pasc. 29 Car. 2.* a motion was made in *B. R.* to set aside an order of sessions for the settling a poor person in a parish, sent thither by warrant of two justices, and confirmed in sessions upon an appeal; and the court refused to enter into the merits of the case, the order of sessions being in this case final unless it be made appear that there is an error in the form of proceeding. *Vent. 310.* An order of two justices, &c. was quashed, because it did not appear that it was made upon the complaint of the churchwardens or overseers of the poor; besides, there was no adjudication. It was held by the court for a general rule in cases of orders for removal, that if the parish to which a poor person is removed, doth not appeal in time, such order is conclusive to the contending parishes. Upon complaint to the sessions that the parents did not relieve a poor child, they appointed two justices to examine the matter, &c. who made an order for the parents to relieve it; but it was quashed, because the sessions could not delegate their power to other justices; therefore they should have made the original order. *Style 154.*

Sessions cannot
delegate their
power to other
justices.

16. The order of two justices set forth, that the person removed was lately settled in the parish of *C. &c.* it should have been

legally settled, &c. and for that reason it was quashed.

17. Every order of removal ought to be directed to the parish officers removing, and to the parish officers to whom removed, and not to the officers of that parish alone to which the person is removed; and for that reason the order was quashed.

How order of removal ought to be directed.

Salk. 256.

18. The return of the *certiorari* in a schedule annexed to the writ was not made by two justices, but by the clerk of the peace; but he not being the person to whom the writ was directed, it was quashed, and a new *certiorari* granted, which being returned and filed, it was objected, that it did not appear the order that it was made by two justices of the division, &c. pursuant to the *stat.* 13 & 14 *Car.* 2. c. 2. but adjudged, that to this matter the statute was only directory and not restrictive, as the words (*quorum unus*) &c. are. 3 *Salk.* 258.

19. An order was quashed upon an appeal; but that sessions order was likewise quashed, because it did not appear, that it was made before them by way of appeal, and they have no jurisdiction but upon appeal. 2 *Salk.* 475.

20. There is a difference as to the place of settlement, where an order of two justices is confirmed, and where 'tis reversed upon an appeal, or not appealed from; for where 'tis confirmed, and not appealed from, there that parish, to which the poor man was removed by the original order, shall never say that it was the last place of his legal settlement, because the affirmance of the order upon an appeal is conclusive to all parishes; but where the original order is discharged upon an appeal, there the matter is at large again as to all parishes, except that to which the poor man was removed, which, upon the appeal, was determined not to be the last place of his lawful settlement. *Swansfield and Shensfield Par.* 2 *Salk.* 492. 3 *Salk.* 260, 261. *Rex v. Inhab. Rissip, &c.* 1 *Ld. Raym.* 394, 425. *Qu.* A third parish, which was not party to an appeal, shall not be concluded by it. *Inhab. Par. Kingston Bowsey v. Inhab. Beddington in Rex.* 1 *Ld. Raym.* 513.

21. An appeal from the order of two justices ought to be to the next sessions, that is, it ought to be lodged then, but there is no necessity that it should be determined at that time, because the next sessions may adjourn it to another. *King's Langley Par.* *Salk.* 605.

Appeal from the order of two justices ought to be lodged the next sessions.

22. Adjudged, that where a village in a parish had a church and was reputed as such, and that such village had been used and reputed as a parish, and had all parochial rights and churchwardens, &c. that this is a parish, and chargeable to maintain its own poor. *Car.* 92. *Litt. Rep.* 73. *Cro. Car.* 394. *W. Jones* 355.

23. The sessions made an order for a feme covert to keep and educate her grandchild; but it was quashed, because her husband ought

ought to be charged by the order, and not the wife. *Style 2.* It was ordered by the sessions, that the son should pay 2 s. a week towards the relief of his father, 'till the court should order otherwise; adjudged a good order, tho' it was indefinite, and no certain time limited how long he should pay the 2 s. but had been otherwise if a certain time had been limited. *Jenkin case, 2 Salk. 534.*

24. An order of removal was confirmed upon an appeal, and the next sessions after, there was an order of review made, and the sessions order was quashed, because obtained by surprise; but adjudged that the order of review should be quashed because after the first sessions, when the original order was made, the sessions have no further authority.

25. A poor infant was left in *Christ's Hospital*, and upon complaint of the governors of the hospital, two justices made an order that the overseers of the poor of that parish should receive and maintain it; quashed, because it did not set forth that the parents were not known, or that the child was likely to be chargeable to the parish.

Order must set forth by whom complaint was made.

26. *Whereas complaint hath been made, not said by whom* quashed. *Whereas J. S. has intruded into the parish of A. who is likely to become chargeable; these are to remove him with his children;* quashed as to the children, for they have removed more than is complained of. The parish of *Newington*, place of his legal settlement, *per Cur.* is well; for how can be said he was legally settled there, unless he was last settled there? *The Parish of Appertree cont. Dunsarvel in Devon.* An order of sessions to pay *W. G. and Mary* his wife three shillings per week is ill, because not said they are impotent and unable to maintain themselves. *1 Keb. 489. 2 Keb. 537, 643, 5 Mod. 197.* An order of two justices for removal of a man, his wife and five children, was confirmed by an order of sessions which stated the father's settlement; it was objected to the sessions order, that it did not appear that the children were settled at the same place; they may have gained a settlement elsewhere, especially as their ages are not mentioned: But this objection was held not to be material, for the sessions order only states the fact upon which the doubt arose. *Micb. 1737. Fyfield Marlen and Westover Inhab. Andrews 63.* An order by the justices of the borough of *Marlborough*, for the parish of *St. Mary's* to pay to the officers of *St. Mary's* the sum of twenty shillings weekly, until *we* the said justices shall see fit to order to the contrary, is ill; for the statute never gave the justices such authority; 'tis in effect making a perpetual order; for if one of the justices die, or be removed, no other justice can alter *we* the said justices shall see fit to alter; quashed.

Order must say to what parish likely to be chargeable,

27. *Whereas J. L. is likely to become chargeable, not saying to what parish;* quashed. *Trin. 11 Ann.* If an order say he

ed at *W.* he having lived there for two years as an hired servant, 'tis well enough. *Trin. 11 Ann.*

8. Order was to the churchwardens of *Clypton* to repair to parish of *Ravistock*, and to relieve them, being so sick that cannot be removed. *Curia*: The justices have no authority to send for officers of another parish, but are bound to maintain the poor as long as they continue with them; and *per* *mel*, no parishioners are to be relieved till they are carried to parish; quashed. *Pasch. 1712. Clypton St. Mary's and Ravistock in Devon.* Two justices made an order to compel the churchwardens of *Ely* to pay to the two precedent ones, their executors, 40*l.* quashed; *per Cur.* have no such authority. *Hil. 1712.*

Justices not to send for officers out of another parish.

Nor order churchwardens to pay money to the preceding.

9. An order of sessions to pay *R. G.* and *E.* his wife, three shillings *per* week; objected, not said, they are impotent and unable to maintain themselves; quashed. *1 Keb. 489. 2 Keb. 643, 744. Pasch. 1 Geo. 1. 5 Mod. 197.*

10. A complaint is made by the officers of *Westwoodhay* to the justice of peace, and then two justices adjudge and remove; held well; otherwise, when one justice sets his hand to the order in the absence of the other. It does not appear in the order that *Shellingham* was in the county of *Norfolk*, but *Norfolk* was in the margin; the court held the objection fatal; the difference is between civil and criminal prosecutions, it must appear the parish in the county from whence the person is removed. Order made by two justices, *Sc.* to overseers to continue the weekly payment of 2*s.* to *R. G.* and all the arrears, till they find him an house; quash'd, because the overseers have no power to find an house; that must be done by the lord of the manor, or the justices. It was objected to an order of removal made by two justices, that the justices hands and seals are not put to the adjudication, nor is it so expressed to be in the order. But the warrant and adjudication being in one order, and the names and seals being put in the margin, the one against the adjudication, and the other against the warrant; the court held this to be well enough. *Trin. 1737. The King against Whidworthy Inhabitants, Andrews 4.* An order of sessions on an appeal from an order of removal made by two justices ought not to state the evidence, but to state and determine the facts; it being like a special verdict. *Hilary 1737. The King against Markley Inhabitants, Andrews 151.*

The county must be set forth in the body of the order.

Overseers have no power to find a poor man a house.

An Order of Sessions for a Father to maintain Daughter.

At the general quarter-sessions of the peace, &c.

31. Berks, **C**omplaint having been made unto this court by to wit. B. C. D. &c. churchwardens and overseers of the poor of the parish, &c. that E. F. of the said parish is a poor impotent person, and wholly unable to do any work or to get her livelihood, or otherwise to maintain herself: And it having been proved by the oaths of the said A. B. C. D. &c. T. F. father of the said E. F. of the said parish of, &c. is a man of substance and ability to provide for his said daughter; but refuses to do the same, whereby the said E. F. is become chargeable to the said parish of, &c. It is therefore ordered by court, That the said T. F. do pay, or cause to be paid, unto the said E. F. his daughter, or to the churchwardens, &c. for her the sum of 2 s. weekly, and every week, for the relief and maintenance of the said E. F. until she be better able to provide for self, and for the discharge of the parish aforesaid of and from same.

32. By statute 16 Geo. 2. c. 18. justices may do all acts pertaining to their office, relating to the relief and settlement of poor, passing and punishing of vagrants, repair of highways, and other laws concerning parochial taxes, levies or rates, notwithstanding such justices are rated to or chargeable with the tax &c. within any such parish, &c. affected by any such act of justice. No matter done before the making of this act shall be quashed because done by justice so rated, &c. Provided that enable justices at quarter-sessions to act in determining appeals from orders where they are chargeable.

C H A P. XLVI.

Of Overseers of the Poor.

Churchwardens
anciently were
the only over-
seers of the poor.

1. **C**Hurchwardens were anciently the sole overseers of the poor, and it lay wholly on them, under the direction of the minister, to take care of all such of their parish as were poor, want, and provide for their relief, in order whereto they had the charity of well disposed persons, the liberal contributions of

gy and the religious, and the poor man's box intrusted to
 m. But when on the dissolution of religious houses, and the
 eating of tithes to the laity, the contributions of the clergy
 the religious failed (which was the main fund on which all
 poor of the realm had hitherto been maintained) it was found
 necessary by act of parliament to lay a tax upon the nation for
 support; and the statute 43 *El. c. 2.* was made for their
 support, by which publick officers are created to provide for the
 of the parish, who must be householders, and are sometimes
 three or four, according to the largeness of the parish; and
 overseers, who are in that act superadded for the levying and
 of the said tax, have in a manner superseded the
 churchwardens care in this particular. However, the church-
 wardens are still by the common law overseers of the poor in
 parish, and the said act joins them in equal power with the
 overseers appointed by that act both for the levying and di-
 of the said tax, and all other duties of the said office;
 by several acts of parliament whereby forfeitures are inflict-
 to the use of the poor, the said churchwardens are intrusted
 the receiving and disposing of the said forfeitures to the
 fore said. But they having other business besides, (*i. e.*) to
 care of the church, and the other matters belonging thereto,
 hitherto been before set forth, the whole care of the poor is now
 left to the overseers; and the churchwardens, by the cu-
 of most parishes, are allowed no further to be troubled
 with than of their good-will and liking they should think fit.

By 43 *El. c. 2.* overseers of the poor of parishes are to be
 yearly in *Easter* week, or within one month afterwards, When the over-
 seers are to be
 chosen.

pointment under the hands and seals of two justices of the
 (one whereof to be of the *quorum*) dwelling in or near the
 or in the division where the parish lieth. Justices of peace
 to nominate overseers according to the statute, forfeit
 liable on their goods by warrant from the general sessions
 of peace. The order made for appointing overseers of the
 must mention that they are substantial householders; for this
 was required by stat. 43 *El. cap. 2.* and for such omission
 was quashed on motion in *B. R. Rex v. Sheringbrook*,
Raym. 1394. *A.* and *B.* were appointed overseers by two
 justices; on an appeal to the sessions, suggesting that *A.* was not
 chosen, but that *C.* had a majority of the parishioners, the
 appointed *B.* and *C.* overseers; but the appointment
 was quashed in *B. R.* for the justices at sessions could make no
 appointment, there being one by two justices of the peace.
 3 *Geo. Rex v. Great Marlow.* An appointment for one
 year held good, though objected, that the appointment
 by the statute to be in *Easter* week or within a month after
 the year might expire before the nominating new officers,

or the time for appointing new overseers might come round before the year expired. *Trin. 12 Anna, The Queen against St. Trin. 13 Geo. 1. Rex v. Great Marlow. Mich. 14 Geo. 2. v. Jones.* The nomination of overseers was, that such and by name were appointed to set the poor on work, &c. and mentioned the several duties in the act, but did not by express words appoint them overseers; and for that reason the nomination was quashed. *Trin. 9 Geo. 1. The King against St. Geo. Inhabitants, Fortescue 320.* Justices have a power and ought to appoint overseers in an extraparochial place. *Hil. 8 Geo. The King against The Inhabitants of Rufford, Fortescue 311 M. Cases 39.*

When and how
often to meet,
&c.

3. Overseers of the poor, &c. are to meet once a month at the parish church on Sunday after divine service, unless hindered by some cause to be allowed by two justices, at which meeting they are to consider of proper methods for providing for the poor; and if they neglect thus to meet, they forfeit 20s.

An Appointment of Overseers of the Poor Justices.

4. **W**E A. B. and C. D. esquires, two of his majesty's justices of peace for the county of, &c. whereof A. B. of the quorum, do hereby appoint E. F. and G. H. of, &c. substantial householders of the parish of to be overseers of the poor of the parish of afore said in the said county for this present year, according to the directions of the statute in that behalf made. Given, &c.

5. By stat. 17 Geo. 2. c. 38. from 24 June 1744. churchwardens, &c. shall yearly, within 14 days after other overseers are appointed to succeed them, deliver to such successors, a true and perfect account in writing, fairly entered in a book to be kept for that purpose, and signed by them, in their hands, of all sums of money by them received, or rate assessed and not received; and also of all goods, &c. in their hands, &c. and of all monies paid, and of all other things concerning their office; and deliver over the same to such successors upon oath (or affirmation, if a quaker) before a justice, upon the penalty of commitment by two justices until account. Overseers removing, &c. two justices to appoint another; executors of deceased to account in 40 days. Appeal lies to next general or quarter sessions. Where corporations have not four justices appeal may be to county sessions. There is a restraint as to justices making new rates, for which see the act at large. No distress may be in any place within the county; or on or

of it, in any other county, &c. Appeal lies to next general quarter-sessions. Where distress is made for money justly or poor, no want of form in warrants for appointing overseers or of distress, or in the rate, nor irregularity in distrainment shall make party a trespasser *ab initio*. Succeeding overseers shall levy arrears to reimburse predecessors: Occupiers to be rated. Copies of rates to be entered in a book to be inspected by persons liable, &c. Parish officers not complying with the act, where penalty not provided before forfeit 5*l*. If there are no churchwardens, overseers are to act.

When the overseers books are passed, it is usual for the justices to signify it writ in their book at the foot of their entries. And if money be due to the old overseers, you write *viz.* due to be paid from the new to the old overseers 30*l*. 09*d*. October 11, 1732. Perused and allowed by us *A. B.* two of his majesty's justices of the peace for the said county, whereof *A. B.* is of the *quorum*. And if money be due to new overseers, you may say, remaining in the old overseers hands to be paid to the new ones 19*l*. 09*s*. 09*d*. October 11, 1732. Perused and allowed by us, *A. B. C. D.* two of his majesty's justices of the peace for the said county, whereof *A. B.* is of the *quorum*.

If the churchwardens or overseers refuse to account, then the justices of the peace, whereof one is of the *quorum*, may commit the person so refusing to the county gaol, there to remain without bail or mainprize until he make a true account, and shall have satisfied and paid so much as upon the account appear to be remaining in his hand, which also by warrant may be levied by distress. 43 *El. c. 2*. And if he make a false account, he may be bound over to the sessions, and indicted for it. 5 *Mod.* 179. *Dalt.* 154. They may be also indicted for not collecting a tax; having notice of the persons taxed. 3 *Keb.* 49. Note; The commitment of an overseer of the parish must be until he account, and, not until delivered by course of law, for this would be ill. *Comb.* 305, 374, 391.

The substance of the overseers account is what sums of money they have received, or rated and not received; what stocks, &c. they have in their hands; what poor apprentices they have put out and bound; whether they have suffered any of the poor to wander and beg; whether they have met once a month to consult of these things; whether they have assessed the inhabitants and occupiers of land, &c. and with indifference; whether they have endeavoured to levy such assessments; if they have relieved the maimed and impotent, and executed their duty in all particulars; if they have duly executed justices warrants to them directed for levying forfeitures, &c.

And they must give an account of the name and quality of every person buried in their parishes, and of certificates come to them for the burials.

their hands from the parsons of such parishes, that the persons therein mentioned were not buried contrary to stat. 30 Car. 3. for burying in woollen, and of their levying the penalty of 5 l. on offenders.

Not obliged to disburse their own money.

10. Churchwardens and overseers in present exigencies may provide for the poor, and they shall be reimbursed by a rate, and it is discretionary to give them money weekly, or to provide for them victuals, &c. *Style* 246. Overseers of the poor are not obliged to disburse any of their own money for the support of the poor; but if they do, a rate ought to reimburse them, tho' that rate shall be called the poor's rate, and not the overseer's rate. A *mandamus* does not lie to the churchwardens and overseers to make a rate to reimburse the overseers; but an overseer may cause a rate to be made for that purpose, and when the money is levied, pay himself; and if the justices refuse to sign it, then a *mandamus* may be directed to them to do so. *1 Keb. Clark ver. Churchwardens of Cripplegate. Mod. Cases Regina ver. Parochiam de Littleport. 2 Keb. Rex ver. Overseers & al'.*

No *mandamus* to the new overseers to make a rate to reimburse the old.

11. Upon a motion for a *mandamus* to the new churchwardens and overseers of the poor, to make a rate to reimburse the old ones the several sums by them expended for the maintaining the poor the last year, it was denied, it having already been resolved in *Tawney's case*, *Salk.* 531. *6 Mod.* 97. That a *mandamus* cannot be granted to the new overseers to make a rate to raise money to reimburse the old overseers, but only to raise money for the relief of the poor; for so is the act of parliament expressly, and must be pursued; and an overseer is bound to lay out money till he hath it; if he doth, he cannot make a new rate for the relief of the poor, out of which he may retain so much as will pay himself. *The King ver. Churchwardens, &c. of Rotherhithe in Surrey, Hill.* 11 G. 1.

The justices have power when a parish extends into two counties.

12. When a parish extends into two counties or liberties, the justices have not power to act in that part which lies out of their jurisdiction as to the nomination of overseers, giving warrants to raise assessments, &c. But yet the overseers of such parish extending into several jurisdictions may act in the whole parish, but they must exhibit one account before the head officer of the town, and one other before the justices. *Stat.* 43 *El.* c. 2.

In action against overseers, if defendant has a verdict, he is to have treble damages.

13. If any action be brought against overseers, &c. for anything done by authority of this act, the defendant may plead not guilty, or make avowry or justification, to which the plaintiff shall reply that the defendant did it in his own wrong, whereupon the issue shall be tried, and the whole matter going in evidence; and if it be found for the defendant, or if the plaintiff is nonsuited after appearance, the defendant is to recover treble damages and his costs. *Okely v. Salter. Noy.* 1 *Vel.* 176. *1 Roll. Rep.* 272. *2 Roll. Rep.* 112.

In actions brought against churchwardens or overseers of the poor for mispending the parish money, any parishioner not giving alms, &c. shall be admitted as evidence in all courts of law, by stat. 3 & 4 W. & M. c. 11. In what case parishioners may be witnesses.

An overseer accounted before two justices, and his account was allowed; the parish appealed to the quarter-sessions, they disallowed the accounts, and ordered him to pay so much over, and for not doing it committed him. In this case it was held, that they should have levied the arrears by distress; in default of a distress, have committed him, for the sessions to execute their judgment in the same manner as the two justices must do; and the order was quashed as to that part. *against Hodges, Mich. 4 Ann. B. R. Salk. 533.*

And if any stock shall be in the hands of any poor to whom such justices may make the like warrant to levy, &c. and in default thereof may commit *ut supra*.

Mandamus to the justices, &c. on the stat. 43 Eliz. c. 2. to compel the old overseers to account with the successors, was granted; because by the statute the account is to be given to the justices, and not to the succeeding overseers; besides, two persons named in the writ, and who are to account, do not appear to be overseers. *2 Salk 525.*

The defendants were indicted at the sessions, for that being chosen overseers, &c. and having taken upon them the office, & *uterque eorum*, did collect and receive several sums for the relief of the poor, and did refuse to account within four months after the end of their year, &c. It was objected, that this indictment would not lie, because this was an offence created by an act of parliament, and the punishment being directed by the statute. That the offender shall be committed by two justices, and to remain without bail, that remedy only must be pursued. It was answered, that is a proper remedy to come at the right, but the indictment was a contempt of the law, for which an indictment will lie. *5 Mod. 179.* An overseer of the poor may be indicted for disobeying an order of sessions concerning the settlement of a poor man. *Comber. 213.* So for making false charges in accounts. *Comber. 287.*

If any overseer lays out money, he may be reimbursed by a general order of sessions. *Peckham's case at Maidstone assizes.* *per Hide*, it is good within the statute. *1 Keb. 336.*

An order was made by two justices, that *W. R.* should take upon himself the office of overseer of the poor; but ill, because it did not appear that *W. R.* was an house-keeper, or an inhabitant of that parish, and the court will not intend him to be. *Mod. Cases 77.* When order must set forth that overseer was an house keeper, or an inhabitant.

An order to reimburse was grounded only on account stated by the oath of the party, and never allowed by the two

also justices of
the peace
shall have

next justices of the peace; whereupon the majority of the justices at *Hicks's Hall* refused to grant any new order. *236, 243. Clerk v. The Churchwardens of Cripplegate, Com. 257.* It was agreed in *Taverner's* and *Quaterman's* case, that the churchwardens ought in present exigencies to provide for the poor, and they shall be reimbursed. Order was made by the justices to the inhabitants of *B.* to reimburse the overseers of the poor for money expended in suit against some who refused to pay their rates; and the court was moved for an attachment against them, which at last they granted. *2 Keb. 461. Rex ver. Ogden Monk and Lucas;* and the court conceived that costs may be allowed upon the *Certiorari.* *2 Keb. 500.*

B. R. will compel justices to sign the poor's rates.

22. The court of *B. R.* upon motion will compel the justices to sign the poor's rates, unless they shew cause to the contrary. The case of the inhabitants of *Peterborough, Mich. 20 Car. 1 Sid. 377.*

23. Overseers of the poor were indicted before the justices of the borough of *Reading*, for not gathering several sums of money taxed on several inhabitants, and not ascertaining the counsel excepted to it, but the court ordered the parties to plead having notice of the persons taxed. *3 Keb. 49. Rex v. Broome.*

Justices cannot commit churchwarden as such, but as overseer.

24. Churchwarden of *Hadley* was committed by the next justices as churchwarden, without bail, for refusing to give an account of money received and disbursed by him, &c. Upon *Hab. Cor.* he was discharged; for the justices in their mittimus ought to have set forth that he was overseer of the poor, and justices have no power over him, *quatenus* churchwarden, *quatenus* overseer. *1 Keb. 574. The King v. Peck.* Overseer was indicted for not making up his account; *Holt, C. J.* here the justices are to commit specially, according to the power, until the party do account, and not until delivered by course of law; for if so committed we should discharge him upon a *Hab. Cor. Comb. 374. Rex v. Hummings.* Three justices took the account of churchwardens and overseers, and adjudged that there was due from them to the parishioners 69*l.* and made an order to which it was excepted, that the justices had no power to make such order; but only issue warrants to distrain; but the court ruled the order to be well made, and confirmed it. Churchwardens of *Toppsam, 2 Salk. 484.*

Must commit till they do account.

Sessions have no original power to appoint overseers.

25. The sessions have no original power to appoint overseers; they appoint two of the inhabitants, not said substantial inhabitants, as the statute directs, and qualified *per Cur.* The King v. The Inhabitants of *Chilmorton, Mich. 1726.*

26. Overseers may license poor persons to beg for alms in their own parishes; and if any inhabitants serve poor at their door not being of their own parish, and having such a licence, they shall forfeit 10*s.* *Dalt. 157.*

27. Children of all such whose parents shall not by the churchwardens and overseers be thought able to keep them, are to be set at work by the overseers. 43 *El. c. 2.* And any justice may send to the house of correction, &c. persons refusing to be employed in work.

28. One justice of the peace may give his consent to the churchwardens and overseers of the poor, for their erecting, using, and carrying on any trade, mystery or occupation, for the employing, setting to work, and better relief of the poor of the parish wherein such churchwardens, &c. reside. 3 *Car. 1. c. 4.*

One justice may give his consent to parish officers for their setting up any trade, &c.

C H A P. XLVII.

Parishes and Parishioners.

1. **T**HE stat. 43 *El. c. 12.* provides that there shall be overseers of the poor in every parish; but because several parishes which are large, and had many villages in the same, could not reap the benefit of that act; therefore by 13 & 14 *Car. 2. c. 12.* it is enacted, that in every township and village of Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, Durham, Cumberland and Westmoreland, and other counties in England and Wales, where (by reason of the largeness of the parishes) they are not within the 43 *El. c. 2.* there shall be yearly chosen and appointed according to the rules of that act, two or more overseers of the poor within every of the townships and villages, who shall from time to time do, perform and execute all and every the acts, powers and authorities, for the necessary relief of the poor within the said townships or villages, and shall be liable to such pains and penalties for non performance thereof, as limited by 43 *El. c. 2.*

Townships and villages in Lancashire, &c. to choose overseers, &c. as parishes do.

2. A parish contained two members *A.* and *B.* and *B.* had a chapel of ease and a burying-place, being a long time reputed a parish (though only a member of *A.*) and had used to choose overseers; it was resolved that parishes only in reputation are within the stat. 43 *El. c. 2.* as other parishes are, if the usage of such parish to choose overseers had been constant and without interruption. 2 *Roll. Rep.* 160. *Hilton against Paul. Cro. Car.* 92. *Hutt.* 93. *Litt.* 73. A parish must have parochial rights. 4 *Mod.* 157.

A parish in reputation may choose overseers, &c.

3. An order was made by justices for sending a person to the precinct of *Bridewell* as his last legal settlement, he having served seven years apprenticeship there, which order set forth *Bridewell* to be an extraparochial place. *Per Holt, C. J.* if a place be extraparochial,

Justices have no power to send poor to extraparochial places.

traparochial, and has not the face of a parish, the justices have authority to send any man thither: Possibly a place extraparochial may be taxed in aid of a parish; but a parish shall not be taxed in aid of that. *Inhab. Bridewell and Clerkenwell, Salk. 481* 1 *Ld. Raym.* 549.

Unless a village or town.

4. By virtue of the stat. 13 & 14 *Car. 2. c. 12.* the justices may exercise the powers given by 43 *El. c. 2.* and that in all extraparochial places containing more houses than one, so as to come under the denomination of a village or town. *Salk. ibid.*

Who is a parishioner.

5. A parishioner who is intitled to vote at a vestry (except in places where there is a special provision to the contrary) is any male inhabitant, who pays to church and poor. But a parishioner who has or gains a settlement so as to be intitled to a maintenance in case of poverty and impotency, is any person who is the issue of parents having a settlement; any who serves an apprenticeship to a master who did not come in by certificate; any who serves a year upon one contract. *Trin. 8 G. 2.* Absence a few days with the master's leave will not defeat the settlement; any who executes a parochial office in his own right; any who pays parish taxes (those to scavenger and highways excepted) any who rents 10 *l. per ann.* in a parish, as will be more fully explained by law cases herein after cited.

Case of Hatfield and Totteridge.

6. *Hatfield* was a parish and *Totteridge* a village within the parish of *Hatfield*, and paid their tithes to the parson of *Hatfield* but *Totteridge* for above sixty years, and at the time of making the stat. of 43 *El. c. 2.* was a reputed parish, and had a constable and overseers of the poor, and they provided for the poor of *Totteridge*, and never contributed to the poor of *Hatfield*: The churchwardens, &c. of *Hatfield* make a taxation for the poor and tax *Nichols* plaintiff, who had land, and was an inhabitant of *Totteridge*, which was affirmed by two justices according to the statute; *Nichols* refusing to pay it, they distrain upon him by warrant of the justices of peace, upon which *Nichols* brought trespass against the defendants, the churchwarden and overseer of *Hatfield*; and adjudged by the court that the action lies: For a precinct of a parish is within the stat. 43 *El. c. 2.* and is to be assessed by itself, and not with the mother church. *Nichol v. Walker & al', Cro. Car. 394. 1 Jones 355. 2 Ro. Ab. 560. p. 1.*

A parish in reputation is within 43 *El. c. 2.*

7. A parish in reputation, though really no parish, is within the stat. 43 *El. c. 2.* if it were a parish in reputation when the act was made; and the overseers of such parishes in reputation may make rates for their poor, and distrain for the nonpayment of them. *Cro. Car. 92. Hilton and Pawle, S. C. Hutt. 93. S. C. Litt. 73.* And in such case the inhabitants of the village, which hath parochial rights, and was a parish in reputation, shall not be taxed to the poor of the rectory. *W. Jones 355. Walker v. Carter, S. C. 3 Cro. 394. 1 Roll's Rep. Weedon v. Walker.* But the making of rates in a village which hath no parochial rights, will

will not exempt the inhabitants from paying to the poor of the
 rectory; for it is not so much as a parish in reputation. 4 Mod.

57. *Rad v. Forster.*

8. *Mandamus* to the justices to appoint overseers of the poor
 the town of *Rufford*; they return that *Rufford* is an extraparo-
 chial place, and in the forest of *Sherwood*, and therefore they are
 not to provide for their poor; but the court was of opinion, that
 places extraparo-chial are within the statute; for by the general
 words the justices have power to name overseers in all parishes,
 which must extend to extraparo-chial places, as well as to parishes
 in general, and most of the forests in *England* are extraparo-chial;
 yet they ought to maintain their own poor. 5 Mod. 273.

9. Where a parish, as *St. Botolph without Aldgate*, has but one
 churchwarden, and several overseers of the poor, some for that
 part of it which is in *London*, and others for that part which is in
Middlesex, and the parish rates are several; it was resolved, that
 without any particular usage to the contrary, each part must
 equally contribute towards the relief of children, whose mothers
 lived in either county; because the stat. 43 *El. c. 2.* names pa-
 rishes; but because they had distinct officers and distinct rates,
 and used to make distinct accounts to the justices of each county,
 therefore they shall be taken as distinct parishes. *Raym.* 476, 477.

How parishes,
 part in one
 county and part
 in another, shall
 be taken.

10. Some parishes are so very extensive, and the several parts
 at a great distance, 'twas impossible for the poor effectually to be
 relieved by the ordinary methods of taxing the whole parish, and
 the justices of peace have no power to dismember parishes; not
 though they had been dismembered formerly; and this was the
 reason of the clause inserted in stat. 43 *El. c. 2.* relating to the
 case of *Fowlnes*; and also of making the stat. 13 & 14 *Car. 2.*
 12. aforementioned.

Justices have no
 power to dis-
 member parishes.

11. By 4 *G. 1. c. 14.* a provision is made towards the main-
 tenance of the poor of the parish of *St. Giles in the Fields*, by ap-
 propriating the south gallery, which shall be, when the church
 rebuilt, to that use.

C H A P. XLVIII.

Penalties and Forfeitures to the Poor.

BESIDES the method of relieving the poor by parish
 rates, the penalties and forfeitures imposed by several
 statutes are applied to the use of the poor, a list of some of which
 are follows, viz.

2. Justices

2. Justices of peace not appointing overseers of the poor yearly, incur a penalty of 50*l.* and overseers not meeting once month to do their duty, forfeit 20*s.* for the use of the poor the parish, by 43 *El. c. 2.*

3. Constables and churchwardens not levying the penalties alehouse keepers suffering people to tipple in their houses, forfeit 40*s.* Alehouse keepers permitting tippling 10*s.* and persons tippling 3*s.* 4*d.* to the use of the poor. A person convicted of drunkenness forfeits 5*s.* to the poor, and one keeping an alehouse without licence 20*s.* Officers not presenting him 1 *Jac. 1. c. 9.* 4 *Jac. 1. c. 5.* and 13 *C. c. 3.*

4. Persons selling or delivering beer or ale to an unlicensed alehouse keeper, (except for the use of his household only) forfeit 6*s.* 8*d.* per barrel; half to the poor, and half to the person suing for the same. And sheriffs or other officers receiving the forfeiture, and refusing to pay the moiety thereof, and churchwardens or overseers to whom the same shall be so paid, distributing it among the poor, forfeit double the value thereof to be employed as aforesaid. 4 *Jac. c. 4.*

5. Persons forbearing to go to church forfeit 1*s.* for every offence, 3 *Jac. 1. c. 4.* and profane cursing and swearing, servant, &c. is liable to 1*s.* &c. every other person 2*s.* second offence double, and for the third offence treble. 21 *Jac. c. 20.* 6 & 7 *W. 3. c. 11.*

6. All persons playing at any games or publick sports on Sundays, forfeit 3*s.* 4*d.* to the poor. Butchers killing or selling animals on Sundays; forfeit 6*s.* 8*d.* and carriers, &c. travelling that day forfeit 20*s.* Stat. 3 *Car. 1. c. 1.*

7. Keeping false weights and measures is 5*s.* penalty, clerks of markets sealing false weights or measures, or taking more than they ought for sealing, in the first case forfeit 5*l.* the latter 10*l.* Stat. 16 *Car. 1. c. 19.*

8. Persons erecting wires along the sea shore, or in any ven, &c. and wilfully destroying spawn of fish, forfeit half to the poor. 3 *Jac. 1. c. 12.*

9. Divers forfeitures are given by 13 & 14 *Car. 2. c.* one half to the churchwardens and overseers to the use of poor, and the other half to the persons suing for the same, offending against the directions of the said act, in packing, making, weighing, mixing, and saking of butter; for which see act.

10. Persons planting any tobacco, (over and above the penalties in 12 *Car. 2. c. 34.*) forfeit 10*l.* for every rod or so planted; one third to the poor, by stat. 15 *Car. 2. c. 7.*

11. If any person sell corn otherwise than by Winchester measure, sealed, and stricken by the brim, he shall forfeit to the use of the poor. And mayors, or other head officers knowingly permitting the same, forfeit 5*l.* half to the poor 22 *Car. 2. c. 8.*

12. T

12. Those who take fish in any water without the owner's consent, forfeit, not exceeding 10*l.* and destroyers of conies in the night on the borders of warrens, &c. forfeit the same sum for the use of the poor. Persons found setting snares, hare-pipes, &c. on conviction forfeit such sum, not exceeding 10*s.* as the justice shall appoint, for the use of the poor. 22 & 23 Car. 2. c. 25.

13. Importing cattle dead or alive, except for provision, to forfeit one moiety to the poor. 18 Car. 2. c. 2. Ships in which cattle shall be imported shall be forfeited and sold, and one half of the money arising by sale distributed to the poor. 20 Car. 2.

14. Cattle imported from *Ireland* are liable to forfeiture and seizure for the poor, &c. and parish officers neglecting their duty, forfeit 40*s.* for every bullock, cow, &c. and 10*s.* for every sheep, &c. half to the poor. 32 Car. 2. c. 2. These restrictions taken off for five years, by 32 Geo. 2. c. 11.

15. Persons suspected of stealing wood, if they cannot give a good account how they came by it, to forfeit not exceeding 10*s.* to the poor. 15 Car. 2. c. 2.

16. Butchers killing or selling meat on *Sunday*, forfeit 6*s.* 8*d.* to the use of the poor, by 3 Car. c. 1. And those who do any thing besides works of charity and necessity on a *Sunday*, forfeit 5*s.* crying or exposing to sale any wares (except milk, and by a late act, mackarel) to forfeit the same to the poor. Drovers, waggoners, higlers, &c. travelling on that day, forfeit 20*s.* and others using boats and wherries without licence from a justice, forfeit 5*s.* Stat. 29 Car. 2. c. 7.

17. Where a person is not buried in woollen, and affidavit not made that he is so buried, a penalty is incurred of 5*l.* one moiety to the poor. 30 Car. 2. c. 3.

18. Persons laying dirt, ashes, &c. before their doors forfeit 5*s.* laying rough stones, timber, &c. in the streets, 20*s.* not sweeping the streets before their doors on *Wednesdays* and *Saturdays*, 10*s.* scavengers not bringing their carts, 40*s.* persons not repairing their pavements, 20*s.* and 20*s.* per week till repaired. Every one not hanging out lights in the winter, 2*s.* per night. Persons suffering carts to stand in the *Haymarket* with hay and straw to be sold in the winter after two, and in the summer after three a clock, 5*s.* one moiety of all which forfeitures to the poor. 2 W. & M. c. 8.

19. Persons convicted of tracing or coursing any hares in the snow, or of taking or destroying them with hare-pipes or other engines, forfeit for every hare 10*s.* to the use of the poor; and of taking or killing any hare in the night-time 5*l.* half to the poor; and of shooting at, killing, or destroying any hare, with gun or bow, 20*s.* for the use of the poor, by 1 Jac. c. 27. And if any person unlawfully hunt or wound, &c. any deer in any forest, park, &c. he forfeits 20*l.* and taking or killing deer, 30*l.*

30*l.* one third to the poor. Persons unqualified having ga found on them, and not able to give a good account of it, forfeit not under 5*s.* nor exceeding 20*s.* Inferior tradesmen apprentices hunting, &c. are liable to the same penalty, to the poor. 3 & 4 *W. & M. c. 10.*

19. Sellers of butter committing frauds, forfeit 20*s.* for every firkin; warehouse keepers, weighers, &c. in any port refusing to receive and take care of butter and cheese, forfeit 10*s.* for every firkin of butter, and 5*s.* for every weigh of cheese; and masters of ships that come to lade butter, &c. refusing to do so, forfeit 2*s.* 6*d.* for every firkin of butter and weigh of cheese, one half to the poor, by 4 & 5 *W. & M. c. 7.*

20. Hawkers, pedlars, &c. trading without licence, forfeit 12*l.* refusing to produce their licence, 12*l.* penalty, and costs, &c. not putting the laws in execution, forfeit 40*s.* one moiety to the poor. 9 & 10 *W. 3. c. 27.*

21. Persons selling squibs forfeit 5*l.* and throwing or aiding those who do throw, or suffering them to be thrown out of houses, forfeit 20*s.* one half to the poor. 9 & 10 *W. 3. c. 7.*

22. Selling ale or beer in vessels less than measure, incurs forfeiture not above 40*s.* nor under 10*s.* one moiety to the poor.

Head officers of towns, &c. refusing to stamp measures, forfeit 5*l.* one half to the poor. Brewers keeping private houses,

altering vessels without notice, forfeit 50*l.* one third to the poor.

Gaugers taking a bribe to make a false return, forfeit 10*l.* Distillers refusing to permit gaugers to enter their distilling-houses, forfeit double value, &c. 1 *W. & M. c. 24.* 11 & 12 *W. 3. c. 15.*

23. Churchwardens and overseers relieving a poor person not wearing a badge, forfeit 20*s.* half to the use of the poor. And masters refusing poor apprentices placed out according to the statute, forfeit 10*l.* leviable by distress and sale of goods for the use of the poor. 8 & 9 *W. 3. c. 30.* 2 & 3 *Ann. c. 6.*

24. If a churchwarden or overseer of the poor refuse to receive a poor person removed by order of two justices, they forfeit 5*l.* for the use of the poor from whence the person was removed. 3 & 4 *W. & M. c. 11.*

25. Persons selling or buying apples or pears by any other measure than the act directs, forfeit 10*s.* half to the poor. 1 *Ann. st. 1. c. 15.*

26. Churchwardens within the weekly bills of mortality not making stop blocks, fire-pipes, and not keeping in repair a large engine, &c. forfeit 10*l.* Owners of houses, and head builders or workmen not building houses with party-walls, and the walls of the thickness prescribed by the act, forfeit each 50*l.* one moiety to the poor. 6 *Ann. c. 31.*

27. Higlers, chapmen, inn-keepers, &c. having in their custody hare or other game, forfeit for every hare, &c. 5*l.* and unlicensed

Penalties and
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licensed game-keepers killing hares, &c. or exposing them to
incur the like penalty; one moiety to the poor. 5 Ann.

14. 9 Ann. c. 25. Explained 28 Geo. 2. c. 12.

28. Hackney coachmen and chairmen, for demanding more
than their fare, or misbehaving, forfeit a sum not exceeding
to the poor. 9 Ann. c. 23.

29. Persons who shall keep any office or place for making
surances on marriages, births, &c. or any office or place,
under the denomination of sales of gloves, fans, &c. for the
improvement of small sums of money, forfeit 500*l.* one third
thereof to the poor; and every person publishing, by writing
or printing, the setting up or keeping such office or place, for-
feits 100*l.* in like manner. 10 Ann. c. 26. §. 109. And per-

sons keeping any office or place under the denomination of sales
of houses, lands, &c. or printing, advertising, or publishing
names or proposals for private lotteries for small sums, to be
determined by the chances of the prizes in some public lottery;
or delivering out tickets for shares in such private lotteries; or
printing or publishing any proposal or scheme of the like na-
ture, forfeit 500*l.* over and above any penalties by any former
act made against private lotteries; one third of the said forfeiture
to the poor. 8 Geo. 1. c. 2. Also persons who shall by colour

of any grant from any foreign prince or state, set up any lot-
tery, or undertaking in the nature of a lottery; or publish any
proposal for such lottery, &c. or sell tickets in any foreign
lottery, forfeit 200*l.* (over and above all former penalties) one
third thereof to the poor. 9 Geo. 1. c. 19. And by 6 Geo. 2.

35. a forfeiture of 200*l.* (over and above all former penal-
ties) is incurred by persons who shall sell, procure, or deliver
tickets in any foreign lottery, or in any class or division there-
&c. one third of the said forfeiture to be given to the poor.

30. By 1 Geo. 1. c. 15. a sixth part of the value of the cloth
forfeited in several cases, for undue measuring and sealing of
mixed and medley broad cloths; and the penalty is given, if in
London, to *Christ's Hospital*; if in any other place, to the use
of the poor of the parish, township, or place where the offence
shall be discovered. By the same act, 40*s.* penalty on any
clothworker, &c. who pays cloth in lieu of money to any per-
son employed in such manufacture, and other forfeitures in other
acts. See that act.

31. By 1 Geo. c. 18. masters of ships, &c. who buy fresh fish
(named in the act) from foreigners to import, forfeit 20*l.* a
moiety to the poor. And by the same act, fishmongers, &c.
selling fish, under the size and lengths (there mentioned) forfeit
the unsaleable fish to the poor, and 20*s.* a moiety to the poor.
And by the same act, unlawful takers, buyers, or sellers of sal-
mon, forfeit 5*l.* and the fish; a moiety to the poor. See the act.

32. Taylors making, felling, or setting upon clothes buttons or button-holes of cloth, stuffs, &c. forfeit 40 s. per dozen; a moiety to the poor. 4 Geo. 1. c. 7. The like forfeiture (a moiety thereof to the poor) enacted to be paid by the wearers by 7 Geo. 1. c. 12. Taylors giving greater wages than allowed to journeymen, forfeit 5 l. one half to the poor. 7 Geo. 1. c. 13.

33. Persons receiving or buying goods clandestinely, knowingly, without paying the customs, forfeit 20 l. one moiety to the poor. 8 Geo. 1. c. 18. Farmers, &c. not bringing butter to be searched, &c. in York, forfeit 3 s. 4 d. for each firkin a moiety to the poor. 8 Geo. 1. c. 27.

34. Parish officers bringing to account money given to the poor not registered, forfeit 5 l. to the poor. 9 Geo. 1. c. 7.

35. Clothiers in the West Riding of Yorkshire failing an inch in breadth, or having a yard too much in the length of a cloth, forfeit 20 s. for each inch and yard respectively; a moiety to the poor. 11 Geo. 1. c. 24.

36. Millman not duly sealing such cloth, &c. or person taking off, defacing or counterfeiting such seal, forfeits 5 l. a moiety to the poor. *Ibid.*

37. A person appointed by a justice of peace, &c. to measure between buyer and seller, refusing to be sworn and adjured, forfeits 40 s. a moiety to the poor: And for want of lawful measure, the owner forfeits one sixth part of the value of the said cloth to the poor, to be paid by the buyer to the overseers and retained out of the price. *Ibid.*

38. Clothiers exposing to sale cloth not marked with the maker's name and place of abode, forfeit 5 l. a moiety to the poor and any person who defaces, counterfeits, &c. such marks before sale, forfeits 5 l. a moiety to the poor. *Ibid.*

39. Persons unlawfully stretching such cloth, forfeit for each inch or half-yard over stretched, respectively, 20 s. a moiety to the poor. *Ibid.*

40. Such cloth shall be dressed in all parts alike, and cloth worker is to affix a seal of lead; offenders forfeit 5 l. a moiety to the poor. *Ibid.*

41. Owners of tenters are to number the yards on them, and forfeit 5 l. for each tenter not numbered; a moiety to the poor. *Ibid.*

42. Refusing searcher to search for cloth with any of the said faults, forfeiture is 10 l. a moiety to the poor; and 5 l. in case of detection of any of the said abuses. *Ibid.* Searcher acting against his oath, forfeits 20 l. a moiety to the poor. *Ibid.* Persons making cloths, not having served seven years, &c. forfeit 10 l. per month; a moiety to the poor. *Ibid.*

43. Using cards with wire teeth in dressing such cloth, forfeiture is 50 l. a moiety to the poor, *Ibid.* See the act.

44. Owners

chap. 48.

44. Owners of houses in *London*, &c. having door case, len-
 &c. in the party-wall, forfeit 50*l.* and not conveying water
 in the roof, &c. by party-pipes, &c. forfeit 10*l.* moieties to
 the poor. 11 *Geo. 1. c. 28.*

45. Second builder is not to take benefit of the first builder's
 party-wall, under the penalty of 50*l.* a moiety to the poor.

46. Makers of bricks or pantiles contrary to the direction of
 the act 12 *Geo. 1. c. 35.* (if not within fifteen miles of *London*)
 forfeit 20*s.* per thousand for such bricks, and 10*s.* per thousand
 for pantiles; a moiety to the poor. 12 *Geo. 1. c. 35.* But see
Geo. 2. c. 15. 3 *Geo. 2. c. 22.*

47. Contractors to ingross, &c. bricks or tiles within fifteen
 miles of *London*, forfeit (each person interested) 20*l.* (each clerk
 or agent) 10*l.* a moiety to the poor. *Ibid.* See the act, and
 the act of 3 *Geo. 2. c. 22.* which alters several of the directions
 given in the former.

48. Clothiers using warping bars or thrums of dimensions
 prohibited by this act, forfeit 10*l.* Working up ends of yarn,
 or other refuse, forfeit 10*l.* Not delivering out and receiving
 back the materials by weight, at 16 ounces to the pound, forfeit
 10*l.* Interrupting constable, &c. (having warrant) to search for
 warping-bars, &c. forfeit 5*l.* Maker not paying the weaver
 according to the number of yards that the chains are laid on the
 warping-bars, forfeits 5*l.* Owners of tenters not measuring and
 duly marking the same, (in *Gloucester, Wilts* and *Somerset*) for-
 feits 5*l.* Persons refusing entrance to inspectors, forfeit 5*l.*
 Inspector acting contrary to his oath, forfeits 20*l.* Millman
 sending home cloth not inspected and measured, forfeits 40*s.* a
 moiety of all these forfeitures to the poor. 13 *Geo. 1. c. 23.*

49. Brickmakers, &c. making bricks or tiles contrary to this
 act, or to 12 *Geo. 2. c. 35.* forfeit 20*s.* a thousand for bricks,
 and 10*s.* a thousand tiles; a moiety to the poor. 2 *Geo. 2.*
 15. See 3 *Geo. 2. c. 22.* which alters these former acts in se-
 veral particulars.

50. Persons wilfully omitting or inserting persons in the lists
 of jurors wrongfully, or taking reward for omitting or inserting,
 forfeit 20*s.* a moiety to the poor. 3 *Geo. 2. c. 25.*

51. Carrying coals within the bills of mortality in sacks not
 sealed, or not made as required by this act, forfeit 20*s.* a moiety
 to the poor. 3 *Geo. 2. c. 26.*

52. Brokers acting in *Bristol* not being duly admitted, forfeit
 100*l.* and persons employing such, forfeit 50*l.* Brokers omit-
 ting to enter contracts in the broker's book, forfeit 20*l.* Bro-
 kers not wearing a silver medal, forfeit 5*l.* Brokers dealing in
 exchange, or making gain, other than in the way of a broker
 only, forfeit for the first offence 20*l.* for the second 50*l.* for the
 third

third 100*l.* a moiety to the poor of the city of *Bristol*. 3 Geo. 2. c. 31.

53. Constables refusing, &c. to execute warrants for providing carriages for the army; and persons appointed by them refusing to provide carriages and men, or hindering the execution of the act, forfeit not more than 40*s.* nor less than 20*s.* to the poor.

54. And constable taking money, &c. for excusing persons from quartering, and victualling, &c. refusing to quarter, forfeit not more than 5*l.* nor less than 40*s.* to the poor. 6 Geo. 2. c. 2.

55. Persons who hawk, sell, or expose to sale any brandy, strong waters, or other spirits about the streets in any white barrow, or upon the water in any ship, boat, &c. or on any bulk, shed, stall, or other place, other than the dwelling-house of the persons so selling the same, for each offence forfeit ten pounds; to be convicted before one or more justices in a calendar month after the offence; a moiety to the poor of the parish. See the act 6 Geo. 2. c. 17.

56. By a statute 6 Geo. 2. c. 29. for the better regulation of lastage and ballastage in the river *Thames*, it is enacted, that the quantity of the ballast delivered shall be found deficient, the master, wardens, and assistants of Trinity-House shall make good; if they refuse or neglect so to do ten days after demanded, the corporation forfeits 50*l.* a moiety to the poor of the parish.

57. And by a clause of the same act, directing the reweighing of lighters which masters of ships suspect to have been altered in their marks, the said corporation upon refusal or neglect forfeits 40*l.* a moiety to the poor of the parish.

58. By 9 Geo. 2. c. 23. a penalty of 10*l.* is inflicted on all those who shall hawk, sell, or expose to sale any spirituous liquors, about the streets, or in other places, not licensed according to the said act: One half of the said penalty to go to the informer, and the other to the poor; and if there be no informer then the whole to be for the use of the poor.

59. Curriers refusing, or neglecting, beyond the times limited in the act, to curry leather brought or sent to them for that purpose by leatherfellers, shoemakers, or other persons dealing or working in leather, forfeit 5*l.* one moiety to the informer, and the other to the poor of the parish where the offence is committed. 12 Geo. 2. c. 25.

60. Persons setting up, keeping, or advertising lottery offices for houses, lands, &c. or playing at games of chance described in the act, forfeit 200*l.* two thirds thereof to go to the poor of the parish; except in *Bath*, where the said two thirds shall go to the poor of the hospital there; by stat. 12 Geo. 2. c. 28. And persons keeping houses, &c. for playing at rolly-polly and other games specified in the act, are made liable to the penalties in the last mentioned act; by 18 Geo. 2. c. 34.

61. Persons

61. Persons employed in the manufacturing of woolen, linen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, and silk, and in the making of hats, that shall purloin, imbezil, secrete, sell, pawn, exchange, or illegally dispose of any of the materials, or shall reel short or false yarn, and the buyers, receivers, &c. of such materials, incur several penalties by the statutes of 1 Ann. stat. 2. c. 28. 13 G. 2. c. 8. & 22 Geo. 2. c. 27. most of which penalties are double the value of the materials so purloined, &c. and one half thereof to the use of the poor: but see the statutes for the particulars.

62. Those who shall be convicted of maliciously pulling up or destroying any turnips, growing in any lands or grounds, for the first offence (over and above making satisfaction to the owner) shall pay, to the use of the poor of the parish, such sum, not exceeding 10s. as the justice or justices before whom convicted shall deem meet. 23 Geo. 2. c. 26. §. 13.

63. Persons convicted of selling ale without license, forfeit for the first offence 40s. for the second 4l. and for the third and every other 6l. half to the informer, and half to the poor. 26 Geo. 2. c. 31. & 28 Geo. 2. c. 19.

64. Workmen employed by clock or watchmakers, or intrusted by them with any gold, silver, or other metal, or material to be wrought or manufactured for any part of a clock or watch, or any diamond or precious stone to be set therein; that shall purloin, imbezil, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any clock, watch, gold, silver, &c. with which they shall be so intrusted; and the buyers, receivers, &c. of such clocks, watches, &c. knowing the same to be purloined, for the first offence forfeit 20l. and for the second, or other subsequent offence 40l. which forfeitures, after satisfaction made thereout to the party injured, with reasonable costs of prosecution, shall go to the use of the poor of the place where the offence shall be committed. 27 Geo. 2. c. 7.

65. Persons, that without right, nor having a legal license, shall set fire to, burn, or destroy, or shall abet, aid, or assist in destroying any goss, furze or fern, growing on any forest or chace in England, without the consent of the owner or proprietor, or person chiefly intrusted with the care of such forest or chace, on conviction, forfeit any sum not exceeding 5l. nor less than 40s. one half to the informer, the other to the poor. 28 Geo. 2. c. 19. §. 3.

66. By stat. 30 Geo. 2. c. 24. §. 3. if any person shall pawn, exchange or unlawfully dispose of the goods of any other, not being employed or authorized by the owner so to do, he shall, on conviction thereof, forfeit 20s. to be applied towards satisfaction of the party injured, and to defray the costs of prosecution: But if the party injured declines to accept thereof, or there be any overplus, then such forfeiture or overplus shall be

for the use of the poor of the parish. And pawnbrokers shall make default in entring of goods pawned, pledged or changed with them, or in giving a duplicate of such entry, directed by the act, forfeit 5 *l.* *sect.* 4. And persons knowing buying or taking in as a pledge any linnen or apparel intru to others to wash, scowr, iron, mend, or make up, for double the sum given or lent, *sect.* 6. And those who shall pose or hinder officers authorized by warrant to search for goods suspected to be unlawfully pawned, pledged or exchanged, forfeit 5 *l.* All the said forfeitures to be for the poor of the parish where the offence is committed.

67. And by the same stat. 30 *Geo.* 2. c. 24. §. 14. &c. persons licensed to sell any liquors, permitting journeymen, labourers, servants or apprentices, to game in their houses, houses, &c. forfeit, for the first offence 40 *s.* and for every offence 10 *l.* And the journeymen, &c. convicted of game in such houses, &c. forfeit any sum not more than 20 *s.* nor than 5 *s.* at the discretion of the justice, three fourths of all the forfeitures are to go to the use of the poor.

68. Persons convicted of stealing, or maliciously pulling or destroying any madder roots, for the first offence forfeit sum not exceeding 10 *s.* as to the justice shall seem meet, to the use of the poor. 31 *Geo.* 2. c. 35.

See more hereafter, particularly from *Chap.* LXIII. to end.

C H A P. XLIX.

Poor Prisoners.

How poor prisoners are to be provided for.

1. **T**HE statutes relating to the relief of poor prisoners 14 *Eliz.* c. 5. 43 *Eliz.* c. 2. and 19 *Car.* 2. c. 4. 14 *Eliz.* c. 5. justices of peace in their general quarter-sessions may tax every parish in the county towards relief of poor prisoners in the common gaol for debt, so as it does not exceed 8 *d.* a week for every parish, to be levied by churchwardens every Sunday, and paid once a quarter to the high constable head officers of every town, &c. who are to pay it to the collectors appointed by the justices in their sessions, under the penalty of 5 *l.* See 12 *Geo.* 2. c. 29.

2. By 43 *Eliz.* c. 2. justices of peace have power at their sessions yearly, to rate every parish at a certain sum to be paid weekly; no parish to pay more than 6 *d.* nor less than a penny, toward relief of poor prisoners in the *King's Bench* *Marshall*

Chap. 49, 50. Parish Law.

Marshalsea, each respectively to receive out of every county yearly. Treasurers for the county are to be chosen at the *Easter* sessions, who refusing to execute the office, distribute relief, or to account, shall forfeit 3 *l.* to be levied by distress. Chap. XXXII. §. 33.

3. By 19 *Car. 2. c. 4.* justices in their sessions may also provide a sufficient stock to set poor prisoners to work, committed for felony and other misdemeanors, by such ways and means as their county charges are raised, provided no parish be rated above 6 *d.* a week, and they may appoint overseers to examine their accounts and punish abuses. See 12 *Geo. 2. c. 29.*

4. Collectors for prisons are weekly to distribute and pay all such money as they shall receive for the relief of the said prisoners, upon pain of forfeiting 5 *l.* as well the collectors appointed, the churchwardens, constables, &c.

5. Persons convicted of endeavouring to bring spirituous liquors into any gaol or prison, shall pay such fine not exceeding 10 *l.* nor less than 10 *s.* as the justice shall impose; half to the gaoler, and half to the poor of such gaol. And gaolers not bringing up the clauses in the act, directed to be hung up in the gaol, forfeit 40 *s.* to be paid in like manner. 24 *Geo. 2. c. 40.*

CHAP. L.

Rates and Assessments.

BY 43 *Eliz. cap. 2.* every inhabitant and occupier of Every inhabitant houses, lands, tithes, coal, mines or underwoods, is to be rated to taxed weekly, or otherwise, for the relief of the poor, according to the visible estate he hath in the parish where taxed. the poor.

This tax may be made upon lands or goods, though one How to be rated. person is not to be charged for both. When charged on goods,

they are rated according to the usual value of land, viz. 100 *l.* of goods at 5 *l. per annum.* A farmer for his stock is not chargeable and taxable to the poor's rates; but a tradesman is chargeable and taxable for his stock in trade; by *Powell, Powys Gould*, contrary to the opinion of *Holt C. J. Hill. 5 Ann. v. Inhab. Barkin*, of the hamlets of *Donnesdon* and *Needham*, 2 *Ld. Raym. 1280, 1281.* See 2 *Bulst. 354. Fitz-G. Fortescue 316, 318. 1 M. Cases 61, 314.*

The churchwardens and overseers of the poor, by warrant from any two justices of the peace (*quorum unus*) may levy How the rate is to be levied. tax by distress and sale of goods, where any person refuses payment of the sum he is assessed; and if there be no distress,

R 2

whereby

whereby the same may be levied, he shall be committed to common county gaol, there to remain till payment. By 17 Geo. 2. c. 3. from the first of May 1744. churchwardens, &c. shall give publick notice in the church, of the rate for relief of poor, allowed by justices, next Sunday allowed: No rate valid, so as to be collected without such notice. And they shall permit all the inhabitants to inspect such rate at all seasonable times, paying one shilling, and demand forthwith give copies of the whole, or any part, of the rate of sixpence for every 24 names, on forfeiture of 20 l. to the party grieved, to be recovered by action of debt, bill, &c.

In what case
justices may tax
other parishes.

4. In case a Parish is not able to maintain its own poor, the justices may tax any other parish within the hundred to their relief; and if the hundred be not of ability to relieve parishes, the justices in their sessions may tax any other parish or parishes within the county. An order that one parish contribute to the poor of another parish, must say expressly, that the latter is unable to maintain its own poor, as where it is said, that *they were oppressed, &c.* Comber. Such contribution may be by a gross sum yearly. *Ibid.* 309. And the justices may either charge particular persons the whole parish, and they to levy it. *Ibid.* 309.

Sessions may re-
lieve persons
grieved, &c.

By whom the
rate is to be
made, &c.
Justices may tax
particular per-
sons, &c. or the
whole parish.

5. If any person or persons find themselves aggrieved by any rate or tax, the justices in their general quarter-sessions may take such order as they shall think fit.

6. The overseers of the poor are to make the rate, which is usually approved by the inhabitants, and to be allowed by the justices; and it has been adjudged, that the justices may tax particular persons, and need not assess the whole parish, who are to contribute to the poor of another parish, or they may tax the whole parish. 2 *Bulst.* 532.

7. A parish in reputation may make rates for their poor, and distrain for non-payment of them; and the inhabitants of a village which hath parochial rights, and is a parish in reputation, shall not be taxed to the poor of the rectory; but the inhabitants of a village which hath no parochial rights will not, be exempted from paying to the poor of the rectory. *Car.* 92. *Roll. Rep.* 160. 4 *Mod.* 157.

Parents, &c. of
poor persons may
be compelled to
relieve them.

Cases of it:

8. The father, grandfather, mother and grandmother, and also the children of poor old impotent persons (being of full age) shall at their own charges, and without any taxation, relief, or assistance from the parish, maintain and relieve such persons, in such manner, and according to that rate as shall be assessed by the justices of the peace in their general quarter-sessions, upon pain of forfeiting 20 s. per month. *Stat.* 4 Geo. 2. c. 2. A husband marrying a grandmother having an able-bodied child, shall be chargeable to the relief and maintenance of a poor grandchild, during the life of the grandmother. *Com.*

But where a grandmother is unable to relieve her grand-
 mother, and marries with a man of ability, he is not to be charged ;
 if the husband after marriage becomes to be of ability, the
 grandmother at the time of marriage having nothing, he shall
 be bound to keep the child. 2 *Bulst.* 345, 347. A father
 ordered to allow maintenance to the son's wife, he being
 and sea ; and a father-in-law has been adjudged to be within
 meaning of the act 43 *El. c. 2.* *Style* 283. A Jew had
 only daughter, who became a christian, he turned her out of
 ; at sessions an order was made that her father being very
 should allow her 20 s. per month for her maintenance, under
 penalty of 12 l. this order is not maintainable upon *stat. 43*
 because it was not alledged that she was poor, or likely to
 come chargeable to the parish. *Inhabitants of the parish of*
Andrew's Undershaft v. Jacob Mendez de Breta, 1 *Ld.*
m. 699.

All persons (the clergy themselves not excepted) must con-
 tribute to the relief of the poor. 2 *Keb.* 251. And all things
 bringing an annual profit may be taxed, and tolls are taxable.
ib. 594. It hath been resolved that ground-rents are liable
 to the poor rates. *Comb.* 62. The tax is to be in proportion to Rates must be
 yearly value, and not the quantity of land ; and as it arises according to the
 reason of the land in the parish, the farmer or renter to pay yearly value.
 and not the landlord for his rent ; it may be laid either upon
 lands or goods ; but a farmer being assessed for the land he oc-
 cupieth, shall not be assessed for his stock on that land necessary
 for manure, nor the profits for which he has been already taxed,
 for other stock he is taxable. And a clothier, &c. having
 estate in lands, and a great stock of wares, may be taxed
 both. Persons must be charged only in that place where the
 goods are at the time of assessment, as in case of lands ; and
 if a man hath no goods where assessed, and is distrained, he may
 bring an action of trespass, &c. By *stat. 17 Geo. 2. c. 37.* from
 June 1744. where any dispute or uncertainty is in what pa-
 rishes &c. drained or improved lands lie, and ought to be rated ;
 the occupier of such lands, and houses built thereon, tenements,
 and arifing therefrom, mines therein, and saleable underwoods
 therein, shall be rated, &c. to the poor, and all other parochial
 rates, in such parish, &c. as lies nearest to such lands, as other
 rates are liable to be rated. Disputes to be determined at ge-
 neral quarter-sessions, after application and notice, &c. such de-
 termination to be final, but not otherwise to affect the bounda-
 ries of parishes ; a saving for *stat. 16 & 17 Car. 2. of Deep-*
fen.

10. When the cause of taxation, made either by two justices Cause of taxing
 at quarter-sessions, of other parishes, for inability of those where- other parishes
 the poor are resident, ceases, the tax shall cease and the con- ceasing the tax
 tribu- tion lessen as there shall be less occasion. *Mod.* 437. *Litt.* 73. shall cease.

Court will not
bail overseers
convicted, &c.

11. The inhabitants of *Limehouse* and overseers, &c. were convicted for not making an equal rate for the poor, and the fine was set; it was moved that they might be bailed on error brought; but the court refused, and would not supersede execution. 2 *Keb.* 172. 1 *Sid.* 320.

Whenever a
statute appoints
two next ju-
stices, cannot go
to the sessions
originally.

12. The court refused to confirm an order of sessions, made to charge another parish to contribute to the poor of *Hinkley*, because the two next justices, who by the *stat. 43 Eliz. c. 2* are made justices within the hundred, had not made any order, and the sessions cannot meddle originally, because then the appeal is taken away; and therefore the next justices ought at least to certify there is no parish sufficient in the hundred; so whenever any statute appoints the two next justices, none can go to the sessions originally; *contra*, where it appoints any two justices, the sessions may originally determine it; & *per Cur.* an order was quashed. 1 *Keb.* 685. An original order made at the general quarter sessions, *That the churchwardens and overseers of the poor of the parish of A. do make an assessment to the church and poor by a pound rate, &c.* was quashed, because the justices have not any jurisdiction to make such original order at the quarter sessions; although it had been otherwise if it had come before them by appeal. *Regina v. Inhabitants of Abford East*, 2 *Ld. Raym.* 798.

Sessions may
vacate whole
rates, &c.

13. The justices may quash the whole rate where it is unequal, and may make a new one themselves, or order the inhabitants to make a new one. The case of the parish of *Shoreditch*, *Mich. 10 W. 3. B. R. Salk.* 524. Upon setting aside a poor's rate upon an appeal, it was objected, that the sessions had not power to vacate whole rates; but only to relieve particular persons, whom they find to be aggrieved; but adjudged that they may vacate whole rates, and refer it to the churchwardens to make new rates, or they may make new rates themselves. *Shoreditch parish*, 2 *Salk.* 254. *Carth.* 464.

None to be rated
for a whole
quarter, or di-
stresses taken by a
general warrant.

14. *P.* took part of a house in the parish of *B.* on the 1st day of *December*, and was rated and distrained for a quarter's rate due at *Christmas* following, which distress was taken on a general warrant made for the whole year; adjudged that he could not be rated for a whole quarter; because by the statute the poor's rates are to be assessed monthly; for, otherwise a man cannot remove in the middle of a quarter, but he will be twice rated; neither can a distress be taken by a general warrant made at the time of the rate, but there ought to be a special warrant; neither can it be taken for a quarter before it is ended, if the custom is to rate quarterly. *Tracy v. Talbot*, 2 *Sa.* 532. 6 *Mod.* 214.

Hospital lands
are rateable.

15. Adjudged that hospital lands are rateable to the poor, because no man, by appropriating his lands to an hospital, can exempt them from such rates, to which they were subject before.

re, and by that means lay a greater burden on the parish.

Salk. 527. An house converted into a conventicle, and used for no other purpose, shall not be rated to the poor's tax. Hill.

Geo. 2. B. R. Fortescue 306. Where a lessor covenants to pay the taxes on the lands demised, rates to church and poor are not

within this covenant: They are personal charges. Mod. Cases

Law and Equity 314. Theed v. Starkey.

16. Adjudged that all rates ought to be equal as near as may A standing rate therefore a standing rate cannot be good; because lands may not good.

improved every year, and therefore a rate should be altered if circumstances alter. A rate was set aside because made ac-

ording to the land-tax, for personal estate in the publick funds not chargeable to the land-tax, but is to the poor. Hill.

Geo. Rex v. Clerkenwell.

17. An order of sessions was returned upon stat. 43 Eliz. c. 2.

taxing the parishes adjacent, &c. for relief of a poor parish:

objection was taken, that by the statute this ought to have been

made by the two next justices, whereas this order was made at

sessions; quashed because the statute was not pursued, and there-

fore an appeal is prevented. Comb. 25. Rex v. Grifly. Resolved

that all the judges of England, upon a reference to them, that the

assessments for the poor ought to be made according to their vi-

ble estates, real and personal, which they have and enjoy in

the town or place where they inhabit, and not with any regard

to any other estate which they have in any other place; and also

to tax the occupiers of land within the town or parish only, and

not the lessors, or owners of the lands. 2 Bulst. 154.

18. Mandamus to the justices to make a rate for the support

of the poor of the parish of St. Mary, &c. which was opposed,

because the parish officers ought to make the rate, and the ju-

stices only are to sign it; to which it was answered, That this

objection was grounded on that clause in 43 El. c. 2. by which it

was enacted, That where the inhabitants of any parish are not able

to relieve themselves, two justices may tax other parishes, &c.

whereupon a mandamus was granted, directed to the justices; and

it was said, that this is a matter of right, they ought to make a return. The

case v. The Officers of St. Mary's parish in Marlborough, Hill.

Geo. 1.

19. The quarter-sessions originally made an order, setting

out, That whereas the parish of D. was overburdened with

poor, and the parish of E. had no poor, the parish of D. should

be annexed to the parish of E. and that the occupiers should, by

monthly payments, contribute 22 l. per ann. to D. as long as it

was overburdened with poor; and E. had none. Holt C. J. and

the court inclined, That the taxation of particular persons of E.

should be paid to D. or the whole parish of E. in a sum certain, to be le-

fted by the overseers, &c. would be well enough; but that so

Assessments to be made according to the visible estates in the parish, &c.

Mandamus to justices, to make a poor's rate.

much of the order as concerned annexing the parishes, was void
2 Salk. 480, 481. *Dimchurch v. Eastchurch*.

20. An overseer is not bound to lay out money till he receive it; but if he does, he may make a new rate for the relief of the poor, and out of that he may retain to pay himself: *Et per Cur* the churchwardens and overseers may make a rate themselves but it must be for the relief, and confirmed by the justices, and thereupon they may levy the money, and reimburse themselves *Tasoney's case*, Hill. 2 Ann. B. R. Salk. 531. 2 Ld. Raym. 1011, &c. Where parish issues, &c. are levied upon a particular person, the parish ought at common law to make a rate to reimburse him, but a *mandamus* lies not. Q. Comb. 257.

21. **A** Rate and assessment on the several persons here underwritten, inhabitants of the parish of _____ in the county of _____ made and assessed the _____ day of _____ by us whose names are underwritten, the churchwardens and overseers of the poor of the said parish, by and with the consent of two of his majesty's justices of the peace for the said county (quorum unus) for and towards the necessary relief of the lame, old, impotent, blind, and other the poor of the said parish; and for other the purposes in the several acts of parliament, relating to the poor mentioned, being the first rate for the relief of the poor of the said parish for the year 1732. at 10d. in the pound, or being the second rate for the further relief of the poor of the said parish for the year 1732. at 10d. in the pound (or as the case is.)

	l.	s.	d.
A. B. Gent.	00	10	00
C. D. Yeoman,	00	05	00
E. F. Merchant,	00	07	06
G. H. Lincn-Draper,	00	06	00

J. K. Churchwarden.

S. M. } Overseers.
N. O. }

We whose names are underwritten, being inhabitants of the parish of A. aforesaid, have perused the above assessment, and hereby declare, that the several sums above mentioned are by our approbation rated upon the respective persons concerned, and that the same is an equal rate according to the best of our judgments.

P. Q.
J. O.
J. L.
A. M. &c. } Parishioners.

We whose names are hereunto subscribed, his majesty's justices of the peace for the county of _____ (quorum unus) approve of, allow and confirm the foregoing rate made for the poor. Given under our hands and seals, &c.

22. The two justices make an order for the overseers of the poor to pay 2 s. a week to *Elizabeth Reddish*; but the order did not say she is poor, impotent; and otherwise, the statute gives them no such power. *Per Cur'*: The 43 *Eliz.* does not give them power, unless they are upon the poor's rate.

23. A poor's rate is never quashed. If the rate is not good, it is a nullity, and you are not bound to obey it. Two justices made an order to compel the present churchwardens of *Ely* to pay to the two precedent ones, or their executors, the sum of 40 l. quashed; *per Cur'* they have no such authority. To quash a poor's rate, the parties aggrieved appealed to the sessions; the sessions made an order to levy the money on account of the rate according to the land-tax; it was moved to quash it, because persons that do not pay to the land-tax, yet contribute to the poor's rate, as persons who have a considerable sum of money; and it was quashed *per Cur'*. The sessions have no original power to appoint overseers; they appoint two of the inhabitants, not said substantial inhabitants, as the statute directs; and quashed *per Cur'*. The parish of *Honiton* the same objection. All things which are real, and bring in a yearly revenue, may be rated and taxed to the poor.

24. If the mayor of a corporation will not sign a tax made on the palace of a bishop, where the prebends live, the court will grant a *mandamus*. 3 *Keb.* 572. Mayor of *Chichester's* case. And though the justices may for reasonable cause correct a tax; yet they cannot refuse to sign it without reasonable cause, though the statute 43 *Eliz.* c. 2. saith, they shall tax; the usage having been for parishes to tax. 3 *Keb.* 594.

Mandamus granted to the mayor of *Chichester*. Justices not to refuse to sign a poor's rate, without a reasonable excuse.

A Warrant of Distress for a Poor's Rate.

To the churchwardens and overseers of the poor of the parish of _____ in the county of _____ or any of them.

25. Midd. ff. **W** Hereas in and by a rate, tax, or assessment made, assessed and allowed according to the directions of the statute in that case made and provided, R. G. an inhabitant and occupier of an house in the said parish of _____ was duly rated and assessed for and towards the necessary relief of the poor of the said parish for this present year, and hath refused and neglected to pay the sum of 12 s. 6 d. assessed upon him as aforesaid,

aforsaid, although the same hath been demanded of him by the overseers of the poor of the said parish; and whereas it appeared unto us, two of his majesty's justices of the peace for the county of Middlesex, (quorum unus) upon oath of A. B. that the said sum of 12 s. 6 d. hath been demanded of the said R. G. in person, or at the house of the said R. G. (as the case is) and is still in arrear and unpaid; These are therefore in his majesty's name, to will and require you, that some or one of you do forthwith levy the said sum of 12 s. 6 d. so in arrear from the said R. G. by distress and sale of his goods, rendering to him the overplus, if any there be; and if no such distress can be had or taken, that then you certify the same unto us, to the end such further proceedings may be had therein as to law doth appertain. Given under our hands and seals this day of April 1732.

26. Although a poor rate be really made at the sessions on an appeal, yet if it do not appear by the order itself (as by recital of the former order, &c.) the latter order shall be quashed: And the court refused to supply this defect in the order by affidavit. *Comb. 133, 134.*

Poor rate not
removable by
certiorari.

27. In *Easter term 2 Geo. 2. The King against The Inhabitants of Utoxeter.* The court of King's Bench, after great deliberation, resolved, that a *certiorari* does not lie to remove a poor's rate; that if it be not a legal rate, or if it be unequal, the party aggrieved may appeal to the sessions for his remedy upon the distress: And it was so determined 10 *Ann.* in the case of *St. Mary in Marlborough.*

CHAP. LI.

Removals.

In what cases
poor may be re-
moved.

1. **T**HE statute of 13 & 14 *Car. 2. c. 12.* enacts, That where any person shall remove from one parish to another, and in the parish to which he removes shall rent a tenement under 10 *l. per ann.* the churchwardens and overseers of the poor within 40 days, by warrant from two justices, on complaint made by such churchwardens, &c. may remove him to the place where he was settled for 40 days, unless he give security to discharge the parish.

The 40 days
continuance,
how to be ac-
counted.

2. And by the stat. 3 & 4 *W. & M. c. 11.* the 40 days continuance is to be accounted from the time of publishing notice in writing of the house of abode and number of the person's family. And this notice is to be read in the church by the overseer, &c. the

the next lord's day after divine service, on pain of 40s. leviable by distress or commitment for a month. In orders for removing poor persons, the practice hath been not to mention that they do not rent 10*l.* *per ann.* but as to another exception, *viz.* that the order did not set forth, that it was made upon complaint of churchwardens or overseers, the omission is fatal. Such complaint is necessary to give the justices a power of removal; for perhaps the parish may be willing to entertain them. And a return *ex post facto*, that the order was made upon such complaint, shall not supply it. This ought to have appeared upon the face of the order. *Comb.* 400, 534.

3. Bastard children gaining a settlement by their birth, by construction of the statute 18 *Eliz.* c. 13. it has been usual with the justices of peace (for preventing any charge to the parish) if a single woman with child come into a parish, by warrant, to remove her to the place of her last legal settlement. But let a man be settled where he will, he cannot, though likely to become chargeable to the parish he goes to reside in, be removed from thence, if he have any estate there. 5 *Mod. Rep.* 416. 2 *Keb.* 674. *Stanrode v. Bampton.* Where a man marries a feme freeholder, the husband gains a settlement. *Modern Cases in Law and Equity* 287, 288. *The King v. Parishioners of Wilby.*

4. If a man be removed by warrant of two justices from one parish to another, and the churchwardens or overseers refuse to receive him, they shall forfeit 5*l.* to be levied by distress and sale of goods, for the use of the poor of the parish from whence such person shall be removed; and for want of distress be committed for 40 days, 3 & 4 *W. & M.* c. 11. but the party grieved may appeal to the quarter-sessions of the county from whence the party was removed.

5. A woman big with child, being unmarried, was by an order of two justices removed from one parish to another, and there she was brought to bed; the parish to which she was removed appealed to the next sessions, and the order was reversed. Afterwards an order was obtained from two justices to send the child back; and that parish appealed, but the order was confirmed. At last it was removed into *B. R.* and Chief Justice *Holt* gave his opinion, that the birth at the last parish did not settle the child there, by reason the mother was there under an illegal order; which order being reversed, the matter is no more than they unjustly procured the woman to go thither. *Trin.* 3 *Ann.* *Westbury and Costham*, 1 *Salk.* 121, 122.

6. An order of two justices to remove the father and mother, and *John, Elizabeth, and Sarah*, their children, from the parish of, &c. to the parish of, &c. quashed; because it did not set forth the respective ages of the children, for they might be apprentices, or serve for a year, and so gain a settlement elsewhere; for this reason it was quashed as to the children; but it was

Parish officers
forfeit 5*l.* if re-
fuse to receive a
person removed.

Mother removed
by an illegal or-
der, not good.

Order of re-
moval must set
forth ages of
children, &c.

was good as to the father and mother. *The King v. Trinity Parish in Chester, Mich.* 11 G. 1.

The most regular way of justices removing a poor person, &c.

7. If a woman near her time, be, by practice, clandestinely removed from one parish to another, and there delivered, she and the child are to be removed to the parish from whence she was so clandestinely conveyed. 2 Bulst. 381. *Villa de Tewksbury v. Villam de Twining. Comb.* 286, 360. Per Holt, Chief Justice: The most regular way for justices to proceed upon 14 Car. 2. c. 12. in removing a poor person, is to make a record of the complaint and adjudication, and upon that to make a warrant under their hands and seals to the churchwardens, to convey the persons to the parish to which they ought to be sent, and deliver in the record *per proprias manus* into court the next sessions, to be kept there among the records, to charge the parish, and that record may be well removed by a general *certiorari* to the justices of peace. *Hill. 4 Ann. B. R. Salk.* 406.

8. If a poor man settled at *A.* marries a poor woman who is settled at *B.* and has children by a former husband, the wife shall be removed with him to *A.* but the children, such of them as are above seven years old, shall not be removed, and those under seven shall be removed only for nurture; so that they shall be kept at the charge of the parish from whence they are removed. *Mich. 10 Wil. 3. B. R. Salk.* 482.

9. Where an order of removal is made in the county of *L.* it shall not be reversed by another made in the county of *C.* but the remedy is by appeal in *L.* as seems in *Lucas's case, Comber.* 218, 219. And the order must call the *terminus ad quem* the place of his last legal settlement. *Ibid.*

10. A woman and her two children landed at *Harwich* from *Holland*, and removing to another place, were sent back to *Harwich* by order of two justices; the landing makes no settlement; the order was quashed; and *Eyre* Justice seemed of opinion that this is *casus omisus* in the statute. *Comb.* 287. Where a child is brought from the parish of *A.* to the parish of *B.* without legal authority, they of *B.* may by warrant of two justices return the child to *A.* tho' not the place of its last legal settlement; because they have done the wrong: Where the child is first known to be, that parish must provide for it till they find another. *Comb.* 364, 372. But the order (as to the parish of *A.*) must not say, there to be provided for, but they are to be left to take their course according to law. *Ibid.* If a woman, who has a settlement, marries a vagrant, or person who has no settlement, during his life her settlement is suspended, even though he be run away, and it is not known where he resides, but after his death she may be sent to the place where she was last settled. *Hil. 12 Geo. 2. The King against The Inhabitants of Norton, Andrews* 307.

11. Justices may make an order to remove several families, and upon appeal the sessions may reverse it *quoad* one. A poor man ought to have notice, and be heard before he be removed, if it can be; but 'tis not absolutely necessary. A servant well settled, being with a master removable, cannot be removed with him, by stat. 43 *El.* but the master may complain upon the returner. *Comb.* 478.

C H A P. LII.

Servants.

1. **T**WO justices may warn all single persons under the age of 30 years to go to service at a time they shall limit, and any woman above the age of 12 years, and under 40, being unmarried, may, by two justices, be compelled to go to service; and if they refuse so to do, and continue to live idly, having no visible estate, or a lawful way to maintain themselves, they may be sent to the house of correction, or bound over to the sessions. 5 *Eliz. c.* 4.

What persons may be warned by two justices to go to service, &c.

2. Persons having no lands, and such who are bred to no trade to get a livelihood, the churchwardens and overseers of the poor of the parish have power to set them to work; and if they refuse to work, one justice may send them to the house of correction, as he may likewise such persons who refuse to work for reasonable wages.

3. One justice may order such as he thinks fit to work at harvest; and if any shall refuse so to do, he may put them in the stocks for a day and a night; and artificers may be compelled to work in hay-time and harvest; and if they refuse, they will be liable to the same penalties.

One justice may order proper persons to work at harvest.

4. Labourers may go into other counties to work in the time of harvest, having a testimonial under the hand and seal of one justice.

5. And a man may not turn away a servant, or abate his wages on account of sickness. *Dalt.* 187. And if a servant shall refuse to do his work, that is a departure in-law, altho' he stay still with his master. *Ibid.*

6. It was a question, Whether an indictment would lie for enticing a servant or an apprentice out of his master's service, and to carry away his goods; for it is but a private injury, and not in its nature publick; and, therefore, an action on the case lies for enticing; but trespass will lie for taking him out of his actual service. And the court, upon a motion in arrest of judgment,

Indictment will not lie for enticing away a servant, &c.

ment, was of opinion, that an indictment would not lie. *Hil. 2 Ann.* Every justice of peace may command vagrant persons to prison, if they will not serve.

7. None of the persons retained in husbandry, or in any of the trades mentioned in the statute, shall depart from the parish where they served, to another parish, nor out of the hundred or county where they last served, to serve in any other parish, town, &c. unless they have a testimonial under the seal of the constable, and two other honest householders of the parish they last served in, (or if a city or town, under the seal of the said town declaring their lawful departure; which testimonial is to be registered by the parson, vicar, &c.

8. A master retaining a servant in husbandry, not having a testimonial or certificate from his master living in the same county shall forfeit 5 *l.* *Dalt.* 186.

9. If a servant depart without a testimonial, he shall be committed; and if he does not procure one within 20 days, he shall be punished as a vagabond; and so he shall be, if he be taken with a counterfeit testimonial; but this is not much in practice.

10. A servant well settled, being with a master removeable, cannot be removed with him, by stat. 43 *El.* but the master may complain upon the retainer. *Comb.* 478.

11. All complaints, differences or disputes between masters or mistresses and servants in husbandry; and between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers, employed for any certain time, or in any other manner, shall be heard and determined by one or more justices of the peace of the county, &c. where such masters or mistresses inhabit, though no assessment of wages has been made that year by the justices, &c. and the justice or justices are empowered to examine such servants, artificers, &c. or any other witness, on oath touching the premises, and to make such order for payment of the wages of such servants, artificers, &c. as they shall think just and reasonable; provided the sum in question do not exceed 10 *l.* with regard to any servant, nor 5 *l.* with regard to any artificer, &c. and on refusal or non-payment of any sum so ordained for 21 days after order, the justices may levy the same by distress and sale of the goods of such master or mistress, rendering the overplus to the owner, after payment of charges of the distress and sale. And such justice or justices, on complaint on oath of such master or mistress, against such servant or artificer, &c. for any misbehaviour in their service or employment, may hear and determine the same, and punish the offender by commitment to the house of correction to hard labour for a reasonable time, not exceeding one month, or otherwise by abating part of their wages, or by discharging them from their service or employment. And in like manner, on complaint on oath of such servants

servants or artificers, &c. against their masters or mistresses for mis-
usage, refusal of necessary provision, cruelty, or ill treatment,
such justice or justices may summon the masters or mistresses, and
examine into the matter of the complaint, whether they shall ap-
pear or not, proof being made of their being duly summoned;
and on proof of the charge on oath, may discharge such ser-
vants, artificers, &c. from their service and employment, which
discharge shall be given under the hands and seals of such justice
or justices *gratis*. 20 Geo. 2. c. 19. and 31 Geo. 2. c. 11.

C H A P. LIII.

Settlements.

1. Settlements are gained three ways: *First*, By inheritance, *Secondly*, By birth: And *thirdly*, By commorancy. Settlements are gained three ways.

2. As to the first of these, if the father has a legal settlement, the child is settled where the father is; and if the father has no legal settlement, then the child regularly gains a settlement in the parish where born. 2 *Bulst.* 351. But this settlement by birth, may be defeated several ways. 1. If the parent is removed by an illegal order, and from the order an appeal is duly made, pending which the child is born, and then the order is quashed, the child is to be sent back with the mother. 2. By practice, *Comb.* 286, 360. *supra*, c. 52. §. 7. as if a woman near her time is clandestinely sent to another parish, and there delivered. 3. If a woman with child be sent to the house of correction, and is there delivered, the child shall not gain a settlement by its birth, in the parish where the house of correction is, but in the parish where the mother dwelt when sent to the house of correction, as the place where she had probably been otherwise delivered. *Westbury and Costham Par. Salk.* 121. 2 *Bulst.* 258, 381. And persons whose interest in houses or lands is determined, cannot be put out of the town where they were legally settled; nor can they be sent to the place of their birth, or last habitation, but according as they are able or impotent, shall be relieved, or set to work in the town where so settled; but if they wander and beg, then they may be taken up, and sent to the place of their birth. *Dalt.* 158.

3. Settlement by commorancy is where a person continues in some other place than where he was before legally settled, and such continuation makes a settlement. Formerly, every one who was

What makes a
settlement by
3 & 4 W. & M.
c. 11.

A man is settled
where he hath
an estate, &c.

The law unset-
tles none who
are lawfully set-
tled, &c.

Person removed
by practice must
be sent back.

A wife regularly
is settled with
her husband, &c.

was settled as a native, householder, apprentice, or servant for a month, without a just complaint made to remove them, was held to be lawfully settled. But now this month has been extended to 40 days, where a person shall come into a parish, and rent a tenement under 10 *l. per ann.* and several other alterations are made by the statute 3 & 4 W. & M. c. 11. By which statute the renting 10 *l.* a year, or a man's executing on his account any publick annual office or charge for one year, or paying any share of taxes, rates or assessments of the parish, (scavengers rates, and to the highways, are since excepted stat. 9 G. 1. c. 7.) or a person's serving an apprenticeship, or inhabiting in a town, or an unmarried person not having a child being hired for a year, and continuing in the service for a year, any of these will make a legal settlement. By Holt, Chief Justice, having land in a parish will not make a settlement, living in a parish where one has land, will gain a settlement without notice. Between the parishes of *Rysselip* and *Harrington* 2 Salk. 524. By 9 Geo. 1. c. 7. no person shall be adjudged to gain a settlement in a parish by virtue of any purchase there for which the consideration doth not amount *bona fide* to 10 *l.* for any longer time than such person shall inhabit in the parish purchased, and shall then be liable to be removed to the parish where he was last legally settled. The renting a water-mill 10 *l. per ann.* gains a settlement as above. *Evelin* and *Robinson* Par. Salk. 536. But no settlement can be legal in any parish when the residence of the party is obscure and uncertain, coming now and then, and lying in barns, outhouses, &c. no settlement can be where the party is under disturbance from the parish officers. 3 & 4 W. & M. c. 11. Rating a poor officer of a house for his landlord to the King's taxes, is a rating him within the explanatory act to make a settlement. Comb. 24.

4. The law unsettles none who are lawfully settled, nor permits it to be done by compulsion or practice. If one be retained in service only, or had but an hired house, the law does not settle such person. If any shall by indirect means hinder a man from hiring a house, he may for such disturbance be indicted. And it is fineable to remove or put any out of the parish who ought not to be put out, and the persons so removed must be sent back. *Dalt.* 98. If a man born in *A.* be settled in *B.* and he is there thrust and kept out of his house, so that he is forced to wander and beg in *D.* and thence he is sent to *A.* to be settled in *B.* for this was by compulsion. And if a parish will have a man born in *A.* but settled with them, to go to wander, and beg in *B.* that he may be sent to *A.* and he is so, this being by practice, he may be sent back to the parish from whence he came.

5. Regularly a wife is to be sent to, and settled with the husband, though he be but an inmate or servant, and generally with children.

children are to be sent to, and settled with the parents; but if a man hires a house in *A.* and being there with his wife and children, he shall afterwards bind himself a servant to one in *B.* in this case, his wife and children are not to be sent to *B.* but are to remain still at *A.* where they were once settled; but it is otherwise, if the husband had hired an house in *B.* *Dalt.* 166. If the husband hath an house in *A.* and live there by night, but under covenant to serve a master in *B.* and he is there all the day, yet the wife is to continue in *A.* but if he take a house in *B.* she must be settled with him.

6. "Till eight years of age, children are counted nurse-child. Till eight years of age, children are counted nurse-children. ren, yet afterwards they must have maintenance from the parish where they themselves were settled. And if an order is made on the parish where the parents were settled, it must appear upon the face thereof, that the child had gained no new settlement. *St. Giles and Hackney, Salk.* 407. A man marries a poor woman who is settled in *B.* and had children by a former husband, and he is settled in *A.* his wife shall be removed to him, but such of her children as are more than seven years of age shall not be removed; those under seven years of age may be, for cause of nurture; but ought to be maintained at the charge of the parish of *B.* By *Holt, Chief Justice. Rex v. Inhab. of Wangford in Suffolk, 1 Ld. Raym.* 395.

7. An order for the removal of a poor person was quash'd, because there was no judgment of the justices concerning the last legal settlement, but only the oath of a woman. *Salk.* 485. A general order to remove a man and his family is not good. *Salk.* 482. 1 *Ld. Raym.* 395. A smith exercised his trade a year in *T.* and was employed by most of the inhabitants, and by the lord of the manor and justices of the peace; and was removed thither by two justices. This order was reversed at the sessions: Both orders were returned in *B. R.* reciting the special matter, that he was an apprentice in *D.* and had not given any notice in writing, nor was assessed, nor bore any publick office in *T.* The order of sessions was confirmed. *Comb.* 410. Cases of settlement.

8. An unmarried person hired for a year, married before the year was expired; it was held, that he could not be removed, and that upon performing his service, at the end of the year, he would gain a settlement. *Farrington and Witty Par. Salk.* 527.

9. Justices at the sessions are the proper judges, whether 'tis to oblige any person to take an apprentice or not; but a covenant between the master and a third person, the servant not being a party, makes no apprenticeship; such person has been adjudged no more than a boarder for his education, which is no service to make a settlement. *Case of Chesterfield, Salk.* 479, 491. *Sed vide ante, c. 35. §. 29.*

10. If the dispute of settlement of a poor child be between two parishes, the court of *B. R.* usually refers it to the judges of assize;

Cases of settle-
ments.

assize; but if between two counties, this court will determine it. 3 *Keb.* 644.

11. The place which the poor were last legally settled at, the place which by law is to provide for them. *Trin.* 5 *And. B. R.*

12. If the parents of poor children die *in transitu*, the children are to be provided for by the parish where they were born for the place of birth is a certain settlement, and parents wandering with them afterwards, will not alter the case. *Bulst. R.* 351. All children are to be sent to, and settled with the parents; and children above seven years of age found begging or vagrant with the parents, are to be sent to *Bridewell* with them if under, to the place where they last passed through without correction. A man having a wife and children, takes a house in the parish of *B.* for a year, and in that year is wrongfully turned out of possession; whereupon he takes a house in another parish, and is there turned out, and then gets into a barn in another parish, and there his wife is delivered of another child; this case they are all to be sent to the parish of *B.* out of which they were at first illegally forced. Where a child remains in his father's house, and has gained no settlement of his own, his settlement shall attend that of his father, though the child never was there; but otherwise it is where he has been separated from his father, and has gained a settlement of his own. *Hill.* 12 *G. The King against The Inhabitants of Sowton, Andrews* 345, 350.

13. Disbanded soldiers may settle in any town of the county where born, and set up any trade without serving an apprenticeship, &c. by 10 & 11 *W.* 3. c. 11.

14. If a travelling woman having a small child sucking her, is apprehended for felony, and is tried, and condemned, and executed, this child is to be sent to the place of its birth, if that can be known; if not, to the place where the mother was taken; for the child being no malefactor, ought not to be sent to gaol. 2 *Bulst.* 351. 3 *Car.* 1. per *Hide*, Ch. Just. at *Cambridge* assizes. *Dalt.* 958. A woman and her two children landed from *Holland* at *Harwich*, and removed to another place, but were sent back to *Harwich* by order of two justices. This order was quashed; for it seems to be *casus omisus*. *Comb.* 287.

15. An apprentice, though bound to one in one parish, and by his master assigned to one in another, if the indenture is cancelled, is settled in the parish where the first master lived. 3 *Ann.* the case of the parish of *Thursley* in *Surry*, but there must be by indenture. 6 *Mod.* 190.

16. If the order of the two justices is, on the merits, affirmed or quashed, it is conclusive betwixt the parties. *Pasch.* 1 *And. inter Parochias de Bishop Walton & Fer in Com. Essex.* If the places concerned do not appeal from the order of the two justices it is conclusive to all places, unless an after settlement can be found.

bound. *Mich. 5 Ann.* The case of *Great Sanke, Barton and Clifton* parishes. No appeal lies from the sessions to the judge of assize. 2 *Bulst.* 355. Being rated to parish duties, but not paying them, this will not make a settlement; for the statute says, shall execute any office or charge, or pay his share.

17. Inhabitancy and publication of notice, if no disturbance for 40 days after the publication, will make a settlement, by statute 3 & 4 *W. & M. c. 11.* *J. S.* came from the parish of *L.* with a certificate, being legally settled there, and went to the parish of *M.* and because he was likely to be chargeable, they sent him back again to *K.* by an order; but it was quashed, because by stat. 8 & 9 *W. 3. c. 30.* he is not removeable who comes with a certificate, unless he is actually chargeable, and the sessions have no jurisdiction but by way of appeal, upon an order. 2 *Salk.* 436. A man rents a house of 10 *l.* a year, the house lies in two parishes, he is a parishioner where he is settled, and where he lodges; but where a man has a shop in one parish, and lodges in another, he is a parishioner where he exercises his trade; paying to the county bridge gains no settlement. *Trin. 1710.* The pauper being settled in *Faringdon* by licence, removed to *Widworthy*, and lived there with his father in a cotage of 30 *s. per annum*, working as a day labourer: the father died intestate, possessed of the cotage for the residue of a term determinable on lives, at the rent of ——— leaving the pauper and another son: The other son took his distributive share of his father's effects in goods; the pauper continued in the cotage for five or six years after his father's death until the term was determined. After an order made by two justices for removing into *Faringdon*, he took out administration to his father. The court, (*viz.* *Page, Probyn* and *Chapple* justices) were of opinion, that the pauper had gained no settlement at *W.* at the time of the order: *Page* justice said, if he had then been administrator it would not have been sufficient, because he would not have been possessed of the cotage in his own right, but only as a trustee; but as to this *Probyn J.* inclined to the contrary. 1737. *The King against Widworthy Inhabitants, Andrews* &c. A poor man built a cotage upon the waste of lord *Pem-* without his licence, but lived in it without disturbance for many years, and by his will left three guineas in the hands of his executor to purchase the cotage. On his death, *Elizabeth* his child and heir entered, and afterwards married one *Bar-* and they were in quiet possession of the cotage three quarters of a year, and then sold it. It was held, that this was a settlement of the daughter and her husband in the parish where the cotage was, and that they could not be removed to the husband's last settlement, she having a good title in ejectment, and in any but a real action. *Mich. 17 Geo. 1. The King*

S. 2 *against*

against *Wiley Inhabitants*, 2 Sessions Cases 125, 121. *Andrews* 5, 6.

How a covenant
servant gains a
settlement.

18. A servant must be hired for a year, and serve that year to gain a settlement; the original contract must be for a year and yet, if a man hires a servant, and bargains with him that he shall come within a day of *Michaelmas*, and then says he agrees not for a year; yet this contract shall be taken for a year; for it is apparent fraud to evade the statute. *Mich.* 1710. The parish of *Rudwick* and *Cbeddingford*. *A.* was hired as a servant to *R.* for half a year, and after that, was hired again to *R.* there for another half year with the same master; and thereupon served a year in one continued service, though by several contracts. This was adjudged not to gain a settlement; for it ought to be one intire contract, and one intire service. 2 Sessions Cases 535. Parishes of *Dunsfold* and *Ridgwick*. But the following cases seem contrary. *T. Edmonds* was hired to *Wrightson Aynhoe*, and served him the same year, and received his year wages; and afterwards, at *Michaelmas* 1725, went to *Potter Priffiter* to be hired, who told him he would not hire him there for that he expected a man-servant in three weeks; but if *Edmonds*, would supply the place in the interim, he, *Potter* would pay him for his time; whereupon *Edmonds* entered in *Potter's* service, and lived there till near *Christmas* following and then hired to him and served him at *Priffiter* till *Michaelmas* following; then at *Michaelmas* 1726 he was hired at *Priffiter* for a year to *Potter*, and served only to *Midsummer* following. Two justices by their order had sent him to *Aynhoe*, which order, upon appeal, was confirmed at sessions; but both were quashed in *B. R. Mich.* 1 *Geo.* 2. And the court held, that these hirings and service did make a settlement, for he was hired for a year, and served a year. 2 *Ld. Raym.* 1511, 1512. *v. Inhab. Aynhoe*; and this was upon the authority of the cases *Brightwell* and *Westbanning* there cited, resolved and settled in *Hill.* 1 *Geo.* 1. when the earl of *Macclesfield* was chief justice. *Rudwick* and *Dunsfold* was cited on the other side.

Cases of settle-
ment.

19. A person rents two tenements of 5 *l.* per ann. each, and thereby gains a settlement. For the design of the act was to value the competency of the person, by the quantity of land he is able to stock. Therefore it is not material if they were tenements before.

20. A man has a child married, and settled elsewhere, and hires himself for a year, and serves the year, and held the year notwithstanding he has a child, gained a settlement by virtue of his service; he is a single person within the meaning of the statute though not expressly within the letter of it. The parish of *thony* and *Cardigan*, *Hill.* 1710.

21. Two justices have power to inquire into the bounds of a parish concerning settlements. *Hill.* 1712.

22. A servant is hired at *A.* for a year, his master lives there half a year, then lives at *B.* another half year; held, the servant is settled in the last place; for the identity of the service is the same, and the statute does not tie it down to one place; if the master had removed to several places, the last place where he lives 40 days gains him a settlement, agreeable to the statute of 13 & 14 *Car. 2. c. 12.*

23. A woman marries a *Scotchman* who had gained no settlement in *England*, the settlement which she had in her own right does still continue, notwithstanding the intermarriage; for though a woman follows the condition of her husband, she shall not be put by marriage into such condition, that, if her husband is a parishioner no where in *England*, she must starve. *Mich. 1713.* The parish of *Dunsfold* and *Winsborough Green.* *Vide ante cap. 1. §. 10.*

24. A person is a lodger, yet his servant gains a settlement. 1

25. In *Hill. 1713.* in the case of *Stokelane* and *Dolfin*, it was doubted whether the statute of 13 & 14 *Car. 2.* shall be taken generally, or only to those particular places mentioned in the statute; and held, it extends to all generally, or else all *Wales* would be excluded. A poor person hires himself for a year, and before the year expires, he marries; a servant is not restrained from marrying; and *per curiam* it gained a settlement. *Pasch. 1712.* Parish of *Ordenham* and *Henden* in *Mid.*

26. *J. S.* being chose a parish clerk by the parson, served for several years, and received his fees and duties. *Per Cur.* 'Tis a parish office, and has the care and custody of the ornaments of the church. 1 *Lev. 80.* 'Tis true, if he is poor, and has a family, they may remove him; but if they let him continue a year, none can remove him; for although he came in by the parson only, yet the parish paying him, 'tis a consent and approbation; and by this consent of theirs, the law adjudges him in by the concurrence of the parish. *Mich. 1711.* Parish of *Gayton* and *Milwich* in *Staffordshire.* *Vide Salk. 536.*

By *Holt* chief justice: If a poor man has been relieved several years in a parish, I should presume notice in writing, but it is not evidence to the justices. A servant, or one that rents 10 *l.* *per ann.* need not give notice; for they cannot be disturbed. In this case the justices of peace had, by their order, determined it to be a clandestine habitation, therefore the King's Bench took it to be so, though the party had lived six years in the parish. *Comb. 382.* An inhabitancy for forty days in a place where the party has an estate of a beneficial nature, though the forty days were not successively, and the party lodged at a publick house during the time without having any particular room assigned to him, and though the value of the estate did not appear by the order, yet sufficient to gain a settlement. *Hill. 12 Geo. 2. The King against The Inhabitants of Sowton, Andrews 345.*

Cases of settlement.

27. A hired servant marries within the year, and continues the year, held a good service within the statute; *per Cur.*, marrying within the year, a good cause to turn him away; but if he continues, he gains a settlement. Parish of *St. Saviour* and *St. Dionis Backeburch*. A poor man is hired to one Knight who rented a farm, and lived half a year; the master assigns the farm over to another; the servant lives the residue of the year with the other person in the farm, and at the end of the year receives the wages of the second master; this shall be deemed the same service; here is no new contract, so 'tis a service to the first master, and gains a settlement, *tota curia accordante*. Parish of *Iwinghoe* and *Solebury* in *Bucks*. *J. S.* was bound apprentice to *A. B.* of *St. Bride's*, who was a lodger, and had no settlement there; *per Cur.* the apprentice is well settled there, notwithstanding the master is not, nor does his settlement depend upon his master, as that of wife on her husband; but he gains a settlement for himself within 13 & 14 *Car. 2. cap. 12.* by 40 days inhabitation. 2 *Salk.* 533. Between the parishes of *St. Bride* and *St. Saviour*.

28. *A. H.* comes with a certificate to the parish of *E.* and afterwards marries one *S. S.* and had several children by her; her father surrenders a copyhold estate to her of 20 s. *per ann.* and so the husband had it in her right; *per Cur.* the man has gained a settlement in *E.* for a man cannot be turned out of his own, let it be never so small. *Pasch.* 1719. Parish of *Burclough* and *Eastwoodhay*. *Vide Cases L. E.* 430.

29. A son-in-law is obliged by an order to maintain his wife's mother, having an estate with her at the intermarriage; *per Cur.* he is not within the words of the statute, nor within the meaning of it. *Vide 2 Bulst.* at the end.

30. A servant is hired for a year, and three or four days before his service expired, he desired leave of his master to go to a fair to get another service, who refused him; the servant went notwithstanding. This is a settlement; for the request being reasonable, the service in point of law, continues. *Pasch.* 1721. *The King and The Inhabitants of Islip*.

31. A person rents a mill of 10 l. *per annum*, who assigns the lease over to the person who is now removed, during his will, as long as he paid him his rent; he continued two years, and punctually paid the rent, and the whole court were of opinion it was a settlement. If a person rents a tenement of 10 l. *per ann.* and continues 40 days, he gains a settlement within the meaning of 13 & 14 *Car. 2. c. 12.*

32. A certificate person rents 14 l. *per ann.* but it lies in two parishes: *Cur.* it gains a settlement in the parish where he resides. Parish of *St. John* in *Hartford* and *Amptbill*.

33. A master takes an apprentice, the master runs away, the apprentice hires himself for a year, and serves the year; *per Cur.*

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he gains no settlement, not being *sui juris*, nor of a capacity to hire himself; otherwise, had it been by consent of his master, or had his indenture been cancelled.

34. Coming into a parish publickly, and taking a house, and being rated to the poor, and so observed by the officers of the parish, is sufficient notice, though no notice in writing was given the churchwardens. *Pasch. 1 W. & M. B. R. Shower 12. Queen v. Paine, Comber. 107. but see above, sect. 16.*

35. A poor person is bound to a master at B. his master signs him over to one at C. he gains a settlement at C. for the assignment amounted to a contract between the two masters. He cannot be bound apprentice without a deed, nor discharged without a deed. *1 Salk. 68. Paroch. Castor & Aicles, Mich. W. 3 B. R.*

Where a person is bound apprentice by indenture, where ever this apprentice continues forty days in the service of his master or mistress, there such apprentice gains a settlement; and where any person serves the last forty days of his apprenticeship, that is the place of his last legal settlement; and it is likewise of an hired servant. *Hill. 4 Ann. B. R. J. S.* as a servant to Sir P. J. in *Waltham*; afterwards he left his service, and was put by his master to a barber in *Chesterfield*, to learn to shave and make perukes, for which Sir P. J. was to pay the barber 5 *l.* J. S. continued a year with the barber, no contract being between them; this is no settlement, because no service: J. S. was only a boarder in *Chesterfield* for education, which makes no settlement. *2 Salk. 479. Case of Chesterfield.* the same case, by the name of *Gaister and Eccles, 1 Ld. Raym.*

Where an apprentice gains a settlement.

36. Note; The forty days continuance gives a settlement in cases where the person cannot be removed by the justices; as the cases of renting 10 *l.* a year, or living in his own estate, except where the purchase is under the value of thirty pounds. *the Facey* was settled at H. and afterwards went into the parish of where he rented an house at 7 *l. per ann.* and there he lived a year, and paid the rates and taxes due for that house, which were not charged on his person, but on the house; adjudged that this payment of the parish taxes made a settlement; and it is held, that paying taxes as occupier of a tenement, and naming him farmer thereof, is a sufficient designation of the person. *Pasch. 1721.* One, who hired a house of 3 *l. per ann.* a corporation, was made a freeman, and voted as such at the election of bailiffs there, was held to be no inhabitant notwithstanding; for at this day nothing shall create a settlement that does not come within the words of the statute of 3 & 4 *W. & M. c. 11. Rex v. Inhab. de Buckingham, Pasch. 5 Ann. B. R. 534.*

37. 'Tis the service not the hiring which makes the settlement; for if a man hath land in two parishes, and keeps house,

Cases of settle-
ment,

and lives in one parish, and hath a stock of cattle in another parish, and servants there to look after them, they shall be settled in the parish where they serve, and not in the parish where they were hired, and where their master lives. *Rex v. Disney Mich. 8 G. 1.* See 1 *M. Cases* 60.

38. Children gain a settlement by birth in no case but where the settlement of their father or mother is not known, (except only in cases of bastardy) and there it gains a settlement *prima facie*, till the legal settlement is known, and no longer; and the reason is, because the children should not be vagrants. *Tri. 9 G. 1.* — *St. Giles's parish in Reading v. parish of Eversley.* See 1 *M. Cases* 169. The like resolution between the parishes of *Whitechapel* and *Stepney*, *Pasch. 1 W. & M. Cartbaw* 433, 434. A man having a settlement at *A.* removes to *B.* and marries, and has children born there, he lives there to his death, but without gaining a new settlement at *B.* these children, though born at *B.* have not a settlement there, but at *A.* which was the parish of their father's legal settlement. If the father had no settlement, or if his settlement were unknown, then the children should be settled at the parish where born, until their father's legal settlement can be discovered; supposing that they have gained no settlement of their own. *Inhab. Par. St. Giles in Reading ver. Inhab. Par. Eversley Blackwater, Hill. 10 G. 2 Ld. Raym.* 1332.

39. The husband worked at a silk-throwster's in *Spittlefields* for five years, but never lay where he worked, but at a lodging elsewhere; after his death, by order of two justices confirmed at sessions, his widow was removed to *Spittlefields*; but both these orders were quashed in *B. R.* and it was resolved in the case of a cobbler who worked in a stall in the parish of *St. Giles* and had an apprentice who worked with him in that stall, and both lay in another parish; it was adjudged that the working in the stall did not gain a settlement, for that was in the parish where he lay. *Rex v. Hamlet of Spittlefields, Mich. 11 G. 1.* See 1 *M. Cases* 308. A poor man was hired for five years work at a glass-house at *Ratcliffe*, from six in the morning till eight at night, but lodged every night in the parish of *Whitechapel*: This man was removed by order of two justices from *Whitechapel* to *Ratcliffe*, and upon appeal to the sessions the order was quashed. Now both these orders being removed by *certiorari*, the court held that where a man served, and had board wages, and lay out of his master's house in another parish, he certainly gains a settlement in the parish where he lived and served, and not in the parish where he lay; so the order of the two justices was confirmed. *Pasch. 11 G. 1.* The case of the parish of *Whitechapel*, Where one was bound apprentice by indenture, and his master within two years afterwards broke the indenture, and the apprentice by and with the leave of his master was hired

How an apprentice gains his settlement,

another parish for a year, and served for a whole year there, is settled in the first parish; for the indenture cannot be discharged but by deed, or by the sessions; and the hiring after he is bound, or any consequences arising upon such hiring, are entirely void while the indenture subsists; for when an apprentice serves forty days by virtue of the indenture, he cannot gain another settlement, though his master consents, because he had a settlement by the service under the indenture. *Pasch. 10 G. 1.*

Parish of Buckingham v. Parish of Livingston, 2 Ld. Raym. 1352.

40. Where a father has no settlement, there birth gives a settlement to children; but where the father hath a settlement, that is known, they shall be sent to the last settlement of the place. *The last settlement takes*

Mich. 5 Ann. A poor man lawfully settled in a parish and several children born there, and afterwards he and his wife and children went into another parish, and gained a settlement there; and being likely to be chargeable, it was disputed where the children should be provided for; and held, that the children must be settled in the second parish, and not as nurse children, but as part of his family. It is true, if the father had been dead, and the mother had married a second husband settled in a

third parish, in such case her children by her first husband must go with her as nurse-children, and not as part of her family; for this accidental settlement of their mother by marrying a second husband, shall not gain a settlement of her children by her first husband. *Cumner and Milton Parish, 2 Salk. 528, 529.*

Not altered by the mother's marrying a second husband.

Salk. 259. An order of two justices to remove a child from the parish of *Rickersworth* to the parish of *St. Giles*, as being the place of his birth, the place of his father's last legal settlement being unknown, was held good; for where the place of the father's last legal settlement of a legitimate child is not known, there the child may be sent to the place of its birth as well as an illegitimate one: And poor children ought to be kept and provided for by the parish where they were born, and not where the parents die *in transitu*; for the place of their birth (where the place of their last habitation cannot be known) is in judgment of law the place of settling. *2 Bulstr. 351, 352, 357.*

Where a place of settlement is not known, the child must be sent where born.

The sessions may not, as it seems, send the child to the grandfather or grandmother, to be kept, but it may set a rate only.

Bulstr. 245, 246, 247.

41. By 3 & 4 W. & M. c. 11. no soldier, seaman, shipwright, or other artificer or workman employed in his majesty's service, shall have any settlement in any parish, port, &c. by delivery and publication of a notice in writing as aforesaid, unless he be dismissed out of his majesty's service.

42. The statutes relating to settlements are 13 & 14 Car. 2. c. 12. 3 & 4 W. & M. c. 11. 8 & 9 W. 3. c. 30. 9 & 10 W. & M. c. 11. 12 Ann. c. 18. 17 Geo. 2. c. 5. 31 Geo. 2. c. 11.

43. They

Paying to a scavenger's rate gains no settlement.

Settlements to be expounded most favourably to the poor.

Where a servant though discharged, gains a settlement.

Settlement of the father, is a settlement of his wife and family.

43. They who are sent from one parish to another, must be offered to the churchwardens and overseers of the poor of the place, &c. and not to any other person. A man is warden of the borough of *Reading*, and lives in a parish within the borough; and adjudged *per curiam*, it gained a settlement. A scavenger or constable gains a settlement in that parish where he lives, although his office is not parochial, but a precinct office, and extends to more parishes. Paying to a scavenger's rate gains no settlement, for it must be a parochial rate. But *Note* it does in *London*; so likewise paying to the land-tax gains a settlement in *London*. The parish of *St. Lawrence* and *St. Mary* in *Reading*, *Hill*. 1710-11. But see the late act of G. 1. A man rents a piece of land of 10 *l. per annum*, but no house belonging to it, it gains no settlement. Parish of *Sedgmore* and *Dulleton*, *Hill*. 1710-11. Renting 10 *l. per annum*, and forty days residence, gain a settlement; *quod non fuit negatum per curiam*. Adjudged *per curiam*, that serving the office of collector of births and burials gained a legal settlement.

N. B. It is a rule, that all settlements are expounded favourably, liberally, and most beneficially for poor people.

44. *John Stiles* possessed of a lease for years, dies intestate. *Query*, whether the next kin shall be said in law to be settled there. Held not; he has only a right which he must pursue by taking out letters of administration; but no right is settled or vested in him till an actual taking out. See before, this chap. *sect.* 17.

45. A poor man is hired on *Saturday*, *Michaelmas* day being *Thursday* before, to serve him from the said *Thursday* to *Michaelmas* following. *Pratt*, C. J. *J. Powis* and *J. Fortescue* all held it did not make a settlement; for there must be a hiring first, and a service pursuing that hiring. The order was quashed, it being no settlement. A master cannot turn off his servant two or three days before the year expires; if he does, the service in point of law continues, and he gains a settlement notwithstanding; and so adjudg'd.

46. *Parker*, C. J. renting a tenement of 10 *l. per annum* for a month, is a fraudulent renting; but if a person rents a tenement of 10 *l. per annum*, and continues 40 days, he gains a settlement within the meaning of 13 & 14 of king *Charles II. c. 12*.

47. An infant (not known where his friends were settled) settled where he was born. *Vid. Raym.* 476. The settlement of the father is a settlement of his wife and family. Judge *Fortescue*: Birth gains no settlement, but where the settlement of the father is unknown.

48. *A.* is bound apprentice to *B.* who lives in *St. Olave's*, afterwards the apprentice by his master's consent, lives with another person in *Allballows*: *Per curiam* he gains a settlement in the first place; for a person may serve his master in another place.

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place or parish, and altho' he serve another man, yet he shall have the consent of his master, and the benefit accrue to his master. *St. Olave Southwark and Allbailow.* Trin. 1728. B. R. the like resolution was made between the king and inhabitants of Cirencester.

49. A warrant for removing a poor man directed to the constables, &c. without naming the churchwardens or overseers, is void, if executed by the constables; tho' in strictness they are bound to obey it. Case of *Wangford* and *Brandon* parishes in *Suffolk*, *Carthew* 449. By this case it would seem, that the justices of peace may empower a special officer to execute their warrant. An order to remove three persons and their families is void, because it is too general; for, it may be, that some of their families are not removeable. *Rex v. Inhab. de Wangford Suffolk*, 1 *Ld. Raym.* 395.

An Order of two Justices for the Removal of a Person from one Parish to another.

To the churchwardens and overseers of the poor of the parish of *T.* in the said county, and to the churchwardens and overseers of the poor of the parish of *L.* in the county of *Surrey*, and to each of them.

Middlesex, **U**PON the complaint of the churchwardens and overseers of the poor of the parish of *T.* to wit. unto us whose names are subscribed, two of his majesty's justices of the peace for the county of, &c. and one of us of the quorum, that *A. R.* came lately to dwell in the said parish of *F.* not having had a legal settlement there according to the laws in that case made and provided, nor produced a certificate to them, owning him to be settled elsewhere, and that the said *A. R.* is likely to be removeable to the said parish of *F.* We the said justices, upon examination of the premisses taken before us upon oath, do adjudge the same to be true; and we do likewise adjudge, that the last place of the lawful settlement of him the said *A. R.* was in the parish of *L.* &c. We do therefore require you to convey the said *A. R.* from and out of your said parish of *F.* to the said parish of *L.* and we do also hereby require you the said churchwardens and overseers of the poor of the said parish of *L.* to receive and provide for him as an inhabitant of your parish. Given under our hands and seals, &c.

51. Churchwardens and overseers refusing to receive persons removed, and to provide for them, may be bound over to the

Churchwardens, &c. refusing to receive poor persons may be bound over.

the sessions, and indicted for a contempt. 13 & 14 Car. cap. 12. and forfeit 5 l. by 3 & 4 W. & M. cap. 11.

A Certificate of a Settlement.

52. Middlesex, **W** E A. B. C. D. E. F. churchwardens
to wit. *overseers of the poor of the parish of*
in the county of Middlesex aforesaid, do hereby own and acknow-
ledge T. C. of L. to be an inhabitant legally settled in the parish
Z. aforesaid. In witness whereof, we have hereunto set
hands and seals this day of 1733.

Attested by
T. M.
T. R.

A. B.
C. D.
E. F.

To the churchwardens and overseers of the poor of the parish
W. in the county of Berks, or to any, or either of them.

We whose names are hereunto subscribed, two of his majesty's
justices of the peace for the county of Middlesex aforesaid, do allow
of the above-written certificate. And we do also certify that
M. one of the witnesses, who attested the execution of the said cer-
tificate, hath made oath before us, that he did see the churchwar-
dens and overseers, whose names and seals are to the said certi-
cate subscribed and set, severally sign and seal the said certi-
cate; and that the names of the said T. M. and T. R. whose
names are above subscribed as witnesses to the execution of the
certificate, are of their own proper hand-writing. Dated the
day of 1733.

Order of two
justices is a de-
termination of
the right till it
is repealed on
appeal.

53. Order to remove a poor man from B. to C. which
done, and then got an order to remove him from thence to F.
third parish; and these orders being returned by *certiorari*,
was adjudged that C. should have got the original order repea-
ed; for otherwise, the sending him by an order to F. was a fal-
fying the original order, which cannot be done but by an a-
peal; for the order of two justices is a determination of the right
till 'tis repealed; therefore the parish of C. should have appeal-
ed and got the original order discharged, and then the poor man
must be returned to B. from whence he was at first removed, and
that parish must send him to F. the third parish. *Chalbury and*
Chiping Farringdon parish, 2 Salk. 488.

First order con-
firmed on appeal
is conclusive.

54. Order by two justices to remove a poor man to S. which
order was confirmed upon an appeal; then S. sends him
another order to the parish of *Swancomb*; but this last order
being removed by a *certiorari*, was quashed; because the first
ord

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Order being confirmed upon an appeal, is conclusive and binding against all other parishes, and none can say that S. was not the place of his lawful settlement. 'Tis true, if the first order had been discharged upon the appeal, or if there had been no appeal, then the matter is at large as to all parishes, but only as to the contending parishes (*i. e.*) other than to the parish to which the poor man was sent, for he shall never be sent thither again; because by the reversal of the order the sessions did determine that was not the last place of his settlement; so that an order reversed upon an appeal is final only as to the contending parishes; but an order confirmed upon an appeal is conclusive to all parishes. *St. Michael Bedenham and Kingston Bowsey*, 2 Salk. 486. *Swanscomb and Shensfield parishes*, 492. *Rex v. Inhab. of Slip, &c.* 1 Ld. Raym. 394, 425. *Vide Chap. XLV. §. 20.*

55. Adjudged, That if the first order is ill, no subsequent order upon an appeal can make it good, and for that reason in this case both orders were quashed. 2 Salk. 482.

56. An order directed to the churchwardens of a parish to which a poor man is to be removed, is ill; for the justices cannot command him to remove himself to them; but the order should be directed to the churchwardens of the parish from which he is to be removed, and also to the parish officers to whom removed. 3 Salk. 256.

57. If upon an appeal the first order of settlement is quashed, and the person ordered to be sent to the parish from whence he was removed, this is ill; because the sessions have power only to quash or confirm the original order; but because an order may be good in part, and void in part, therefore this order was quashed for that part, by which the poor person was to be removed, and was confirmed as to the other part.

58. An order of removal was confirmed upon an appeal, and the next sessions after there was an order of review made, and the sessions order was quashed, because obtained by surprise; but adjudged that the order of review should be quashed; because, after the first sessions, when the original order was made, the sessions have no farther authority. *Inhab. Cockfield and Boxley*, 2 Salk. 477. See *Comb.* 418.

59. Order made to remove two men and their families from W. to R. quashed; because too general, for some of their families might not be removeable by law: As for instance; a man settled in B. marries a poor woman settled in W. who had children by a former husband; the wife must be settled with the second husband, but the children of the first husband above seven years old are not removeable: It is true, those under that age must go with their mother, but still it is but as nurse-children, for they must be kept at the charge of the parish where their mother was settled before her second marriage. *Johnson's case*, 2 Salk. 485. See *Cases B. R.* 553.

Order for removing poor ought to be directed to the officers of both parishes.

After the first sessions when the original order was made, the sessions have no further authority.

60. Order

Order to remove
a man with his
wife and chil-
dren, too ge-
neral.

60. Order to remove a poor man, with his wife and children from *W.* to *S.* quashed; because wife and children was too general and uncertain, for some of the children might not be removable; besides, this order was, Whereas it appears upon examination before us, or one of us, which is ill; because the examination ought to be before two justices. *Inhab. Ware and St. Stead Mountfitchet*, 2 *Salk.* 488.

61. If a woman servant be with child during the time of her service, a justice upon complaint of the master may discharge her, and the parish where she serves must provide for her as in other cases of casual impotency.

Justices cannot
order houses for
the poor.

62. If justices of peace in sessions make orders for parishes to provide houses, or to give any persons maintenance who are not impotent, but able to work, or having any thing to live upon, those orders are against law; and justices in sessions cannot transfer their authority over to others, as to appoint other justices to make an order, &c. *Bulst. Reports* 347. *Style's Reports* 154.

63. If a man shall be removed by warrant of two justices from one place to another, and the churchwardens or overseers refuse to receive him, they shall forfeit 5 *l.* to the poor of the parish, from whence removed, upon proof of two credible witnesses before one justice of, &c. and for want of distress, to be committed to the gaol for forty days without bail. 3 & 4 *W. & M. c.* 11.

What justices
may send to the
house of correc-
tion those who
will not work.

64. Any one of those justices of peace who may appoint overseers for the poor, may also send to the house of correction or common gaol, such as will not employ themselves in work, being thereunto appointed by the overseers, according to 43 *El. c.* 2. and the statute 13 & 14 *Car. 2. c.* 12. extendeth not only to the counties therein named, but also to other counties where such great and large parishes are.

65. If any poor shall refuse to deliver the stock delivered to them to work, two justices may levy the same by distress; and, in default thereof, may commit such offenders as aforesaid.

66. If the child live in the county of *Middlesex*, and be maintained by the parish there, and the grandfather live in the county of *Suffolk*, the justices of *Middlesex* can make no order therein; but the justices of peace of the county of *Suffolk* must make order to charge, &c.

67. If the grandmother be a person of ability, and then marries, the person with whom she marries is a grandfather within the statute 43 *El. c.* 2. for by the marriage all her goods are given to the husband; but with this difference, if the Grandmother at the time of the marriage were of ability, otherwise not. *Draper's case*, also *Gerard's case*. So also, if an estate descend to the wife after marriage, the husband shall be charged; so also may the father be compelled to allow maintenance to his son's wife,

ife, (the husband being absent) as was done in the case of one *John Ball*, by order, *September 2. 15 Jac. 1. Dalt. 226.*

68. It was resolved by the court, that where a man is taxed the parish rates, and lives there forty days or more after he is taxed, and without giving notice, &c. this doth not make a settlement within the act; because taxing alone is not equivalent to notice, but taxing and paying the tax is equivalent both to the giving of notice, and to the publication of that notice in writing. *Talborn and Boston parishes, 2 Salk. 523. 3 Salk. 253.*

69. The order of two justices set forth, that the person removed was lately settled in the parish of C. &c. it should have been last legally settled, &c. and for that reason it was quashed.

Ann. 70. The order of two justices was discharged upon an appeal the next sessions; and upon a motion to set aside this order of discharge, it was objected, that the sessions did not say whether it was discharged for a defect in form, or upon the merits; for it was for want of form, then the parish from which the poor person was removed is not bound; but if on the merits, then it is bound; but adjudged, that the sessions are not obliged to give any reason of their judgment in the orders they make, no more than any other of the courts of law. *South Cadbury and Bradparishes, 2 Salk. 607.*

71. An order was made to send an idiot to the parish where his father was last legally settled; and this was adjudged a good order. *Hard's case, 2 Salk. 427.*

72. It hath been resolved, that if two houses are inhabited by several families, though they had but one common door into both, they are ratable as two houses; so if one house is divided by partition, and inhabited by several families, such are several tenements rateable severally to the poor; but if one family remove, then it is but one tenement again. *Dalt. 253.* One who possesses lands lying in several parishes shall be rated in every parish according to the annual value of the land lying in each parish.

73. In all actions to be brought in courts of record at *Westminster*, for money mispent by parish officers, the evidence of the parishioners not receiving alms, shall be taken and admitted in the courts aforesaid. *3 & 4 W. & M. c. 11.*

C H A P. LIV.

Testimonials.

To whom justices may grant testimonials.

1. **O**NE justice of peace residing near the place where a shipwrecked person, poor soldier, or mariner shall have been, ought to give him a testimonial thereof, and a licence to pass his own dwelling, &c. in a convenient time.

2. Also justices of peace upon request may grant testimonials of loss by fire, towards repairing the damages sustained by poor sufferers.

C H A P. LV.

Trades for employing the Poor.

Overseers may set the poor to work.

1. **B**Y stat. 43 *El. c. 2.* the overseers of the poor are to take order from time to time, by and with the consent of two or more justices of peace, for employing and setting to work the children of all such whose parents shall not, by the churchwardens and overseers, be thought able to keep and maintain their said children; and also for setting to work all such persons married or unmarried, having no means to maintain them, and using no ordinary and daily trade of life to get their living by, and also to raise weekly, or otherwise, (by taxation of every inhabitant of the parish, &c. in such sums as they shall think fit) a convenient stock of flax, hemp, wool, thread, iron, and other ware and stuff, to set the poor on work.

2. One justice of peace may give his consent to the churchwardens and overseers of the poor, for their erecting, using, and carrying on any trade, mystery, or occupation, for the employing and setting to work, and better relief of the poor of the parish wherein such churchwardens, &c. reside. *Stat. 3 Car. 1. c. 1.*

3. And any one justice may send to the house of correction or common gaol, such as shall not employ themselves in work being appointed thereto by the churchwardens and overseers of the poor of the parish. *Dalt. 148.*

C H A P. LVI.

Vagrants, Vagabonds, Rogues, Beggars, &c.

THERE were formerly many statutes made which related to vagrants, &c. viz. 5 *El.* c. 4. 18 *El.* c. 5. *Jac.* 1. c. 3 & 4. 21 *Jac.* 1. c. 27. 3 *Car.* 1. c. 4. 13 & 4 *Car.* 2. c. 12. 10 & 11 *W.* 3. c. 11. 11 & 12 *W.* 3. 18. 1 *Ann.* c. 13. 5 *Ann.* c. 32. 12 *Ann.* c. 23. 6 *G.* 1. 19. and 13 *G.* 2. c. 24. And those who have a mind to read what the law books speak more fully concerning them, may consult *Jenkins's Rep.* 318. 2 *Bulst.* 251. and 358. 2 *Cro.* 77. *Jenkins's Rep.* 316. pl. 16. *Style's Rep.* 168. The parish of *Hardington* and *Brisley*, 2 *Roll's Rep.* 172. *Rex v. Holmsworth*. But these statutes being now, for the most part repealed by statute 17 *Geo.* 2. c. 5. (which see before in *Chap.* 33.) and this little book being designed chiefly for the use of those who are concerned in parish business, I shall only mention such parts of them as relate to that.

2. And first, poor persons appointed to ask relief in the parish where they dwell, by the overseers thereof, if they shall beg in the highways, though in their own parish, are not to be sent to the place of their birth, or last dwelling, but the house of correction. *Lamb.* 427. None to beg in the highways.

3. Rogues are not to be sent to the house of correction, but they pass to the place of their birth, or to the parish where last legally settled; and if those cannot be known, then to the place they passed through last without being punished; and if that cannot be known, then to the house of correction. 2 *Bulst.* 357. Rogues may not be sent by a general passport, but from parish to parish.

4. *Eliz. B.* being a wanderer with three children, born in three several parishes, came with them to *D.* in *Com. Wigorn*, to her sister, where she died, the three children being left there. Per *Jones* and *Whitlock*, judges of assize, the children ought to be sent to, and kept and provided for by the several parishes where they were born, and not in the parish where the mother died. 2 *Bulst.* 351. And accordingly an order was made and signed by them, and the same delivered to the clerk of the assizes to deliver the same to the parties. Where the children of a woman vagrant dying are to be sent.

5. The great Lord Chief Justice *Hale*, whose name will ever be remembered with veneration, in the preface to his book concerning the relief of the poor, has this memorable passage. "In deed were there a clear means practised for the employing poor person, it were an uncharitable action to relieve them in

A saying of the Lord Chief Justice Hale.

“ a course of idleness; but when I do not know that there is
 “ such a provision, I do not deny my relief; because I know
 “ not whether without it he may not be starved with hunger
 “ and that without his own default.”

6. A vagrant woman coming to *Shillingford* in *Berkshire*, was there delivered of a child, and afterwards went to *Cockswell* in *Gloucestershire*, and left the child there and ran away; two neighbouring justices, on complaint made, and on examination make an order to remove the child to *Shillingford*: It was objected to this order, that it was not set forth or adjudged to be a bastard child; *sed non allocatur*. 2. Objection, no adjudication of its being likely to become chargeable. But to this the court said, it is a necessary consequence, because it was said to be but two years old. As to the statute 13 Car. 2. c. 12. being born in a parish doth not make a settlement, if born in lawful matrimony; for there it must follow the settlement of the father; and in this case, being not said to be a bastard child, and being upon complaint, it therefore ought to follow the parents: But the court held this was a settlement by birth till the parents place of settlement could be discovered; therefore the order was confirmed, notwithstanding it did not say it was a bastard child. Adjudged *Paschæ 5 Ann. Reg.*

Born in a parish doth not make a settlement; if born in lawful matrimony, it follows the father's settlement.

An Order for the Payment of 2s. for taking up a Vagrant begging, &c.

7. Berks, ff. **W** Hereas it appeareth unto me, that A. B. a vagrant, did wander and beg in the parish of D. in the county of, &c. and passed through the said parish unapprehended, and afterwards was taken in the parish of C. in this county, wandering and begging there, by C. D. an inhabitant of the said parish of C. and was by him brought before me J. S. Esq. one of his Majesty's justices of peace for the said county, in order to be examined and punished as by law he ought: Now I do hereby order the headborough of the said parish of D. through which the said A. B. passed unapprehended as aforesaid, to pay unto the said C. D. who did apprehend him, the sum of 2 s. on demand. Given under my hand and seal, &c.

See more *Ch.* XXXIII. and XLII.

C H A P. LVII.

Workhouses.

BY workhouses, I do not mean the *Bridewells*, or houses of correction, established in each county by 39 *El. c. 4.* and 7 *Jac. 1. c. 4.* because the treating of them will come more properly under the title Constables, and Vagrants; nor those established pursuant to the stat. 43 *El. c. 2.* 3 *Car. 1. c. 4.* of which nothing has been said already; but those settled in pursuance of 13 & 14 *Car. 2. c. 12.* 8 & 9 *W. 3. c. 30.* 2 *Ann. c. 8.* and 1 *G. 1. c. 7.* and see Houses of Correction, c. 42.

2. By stat. 13 & 14 *Car. 2. c. 12.* a law was made for erecting of corporations within the bills of mortality, whose sole business it should be to take care of and to imploy the poor; pursuant to which there was a corporation erected in the city of London, who rightly observing that the poor could neither be so well taken care of, nor set to work, while they remained dispersed in a thousand by-holes and corners where they lived, as they might be in case they were all to inhabit together in some proper place to be provided for them, purchased a large house in *St. Dunstons* for that purpose; where a great number of poor, but especially children, are maintained and religiously educated and imployed in spinning of wool, knitting, or sewing, &c. They are dieted and cloathed, and taught to read, write, and cast accounts, whereby they are qualified for services and employments, and are accordingly placed forth apprentices and servants.

3. By this act, power is granted for the president and governors of this corporation, to purchase or take any lands, tenements or hereditaments, not exceeding 3000 *l. per ann.* and any goods or chattels whatsoever of the gift, alienation or devise of any person or persons.

4. This corporation in London having met with such good success, a statute was made 7 & 8 *W. 3.* for the erecting such a corporation in the city of Bristol, by the name of the governor, city-governor, assistants and guardians of the poor. This corporation hath the care of, and providing for all the poor of said city; except such as are provided for by charitable gifts, hospitals or alms-houses, and may purchase, take or receive lands, &c. and of causing rogues, vagrants, beggars, &c. to be apprehended and set at work in their workhouses.

5. This produced another act in 2 & 3 *Ann.* for erecting a corporation for providing for the poor in the city of Worcester, by the name of the guardians of the poor of the city of

Stat. 13 & 14
Car. 2. c. 12.
for setting up
workhouses.

Stat. 7 & 8 W. 3.
for setting up a
workhouse at
Bristol.

Stat. 2 & 3 Ann.
for Worcester
workhouse.

Worcester; and is impowered to hold courts, summon persons &c. and also to provide materials for setting the poor to work, compel idle persons and poor receiving alms, and poor children to dwell and work in workhouses, &c. And they have authority to contract with any parish in the county of *Worcester*, for the receiving, employing, and setting to work poor in the workhouses, &c. This act was enforced and continued for ever by another act made 3 *Geo.* 2.

Stat. 9 *Geo.* 1.
c. 7. for setting
up workhouses
in parishes.

6. These corporations and workhouses being thus set up and established in particular places with good success, at length produced the general good statute made 9 *Geo.* 1. c. 7. whereby it is enacted, that the churchwardens and overseers of the poor of any parish (with the consent of the major part of the parishioners) may purchase or hire any house or houses in the parish or place, and contract with persons for the lodging, keeping and employing of poor persons, and there they are to keep them, and take the benefit of their work and labour for the better maintenance and relief of such poor persons; and in case any poor person shall refuse to be lodged, kept and maintained in such house or houses, he shall be struck out of the parish books, and not be intitled to relief.

7. Where parishes are small, two or more of such parishes with the approbation of a justice of peace, may unite in purchasing or hiring houses for the purposes aforesaid; and churchwardens, &c. of one parish, (with the consent of the major part of the parishioners) may contract with the churchwardens, &c. of any other parish for the lodging and maintenance of poor. No poor persons or their apprentices, children, &c. shall acquire a settlement in the parish, town or place, to which they shall be removed by virtue of this act.

8. This statute had such excellent effect, that I have now before me a true and full account of no less than above one hundred and thirty workhouses already set up and established in *England*; and more are setting up every day, whereby the poor's rates are increased one third, if not one half, in most of the places where such workhouses have been set up.

9. See the statute 13 *Geo.* 1. c. 19. for providing for the poor in *Gloucester*; for which purpose a corporation is erected, having a considerable estate vested in it, and is made capable to purchase lands not exceeding 1000 *l.* per ann.

10. See also 1 *Geo.* 2. c. 20. for erecting a workhouse in *Canterbury*, and a corporation of guardians for the poor, capable to purchase 400 *l.* per ann. and to set the poor at work; and to agree with any parish in *Kent* for setting their poor at work.

11. See also 3 *Geo.* 2. c. 23. for setting the poor at work in *Worcester*, and a corporation of guardians of the poor erected. And

12. 4 Geo. 2. c. 25. which confirms an agreement between the guardians of the poor and the mayor, &c. of Worcester; and vests an hop-market there in the guardians for the benefit of the poor, under a rent of 60 l. per ann.

A Contract for Lodging and Maintenance of Poor,
by Virtue of the Stat. 9 Geo. 1. c. 7.

BE it remembered, that it is contracted this day, &c. in the year, &c. between A. B. and C. D. churchwardens, F. and G. H. overseers of the poor of the parish, &c. of the one part, and J. K. and L. M. of, &c. yeomen, of the other part, that by the said J. K. and L. M. or one of them, shall and will, during the space of, &c. next coming, at their, or one of their own proper costs and charges, in the house of, &c. find, provide and allow, or cause to be found, provided and allowed unto and for N. O. Q. R. S. &c. poor persons of the parish of, &c. aforesaid, sufficient lodging, meat, drink, and all other things necessary for their and every of their keeping and maintenance; they the said J. K. and L. M. being paid and allowed by them the said A. B. C. D. F. &c. the churchwardens and overseers of, &c. aforesaid, the weekly sum of, &c. for the same, which they the said A. B. C. D. F. &c. do hereby covenant for themselves and their successors, well and truly to pay, or cause to be paid to the said J. K. and L. M. as the same shall become due, or they the said J. K. and L. M. being allowed the work, labour and service of them the said N. O. P. Q. R. S. &c. from time to time, in such work and labour as they the said J. K. and L. M. shall think fit to employ them about. In witness, &c.

C H A P. LVIII.

Of Surveyors of the Highways.

BEFORE I treat of the office of surveyors of the highways, it may not be improper just to mention a few things relating to ways in general. And first, there are three sorts of ways, viz. a foot way, a bridle or horse way, and a cart-way. The first is called *iter*, quod est jus eundi vel ambulandi hominis, where a man hath a right to go and come, and was the first or prime way. The second is both a foot-way and horse-way, which is called *actus ab agendo*, and vulgarly is called pack and prime way; because it is both a foot-way, which

Highway and private way.

A way in gross, and a way appendant,

To whom the soil of the highway belongs.

Where highway is bad, travellers may go on the outlets.

which was the first or prime way, and a pack or drift way also. The third is a *via* or *aditus*, which contains both the other two and also a cart-way or carriage-way, for this is *jus eundi, vehendi & vehiculum & jumentum ducendi*, a publick way for carts and carriages, and driving cattle, &c. and this way is twofold, *viz. via regia*, the king's highway, free for all men, & *communis frata*, or a private way belonging to a city or town, or between neighbours and neighbours.

2. And these private ways also, which one or more men have either by prescription or charter through another man's ground are likewise divided into a way in gross and a way appendant. A way in gross is that way which a man holds principally and solely in itself; as if a man hires a close, and hath a covenant for ingress and regress, to and from the said close, through the ground of some other man, through which he might not pass, this is a way in gross; or a way in gross may be that which the *Civilians* call personal; as when one covenants for a way through the ground of another man for him and his heirs. A way appendant is that way which a man hath adjoined or annexed to some other things as appertaining and belonging thereunto, and may be that way which the *Civilians* call real; as where a man purchaseth a way through the ground of another man, for such as do or shall dwell in this or that house, or that are the owners of such a manor for ever, &c. this is a way appendant to that house or manor, &c.

3. The king's highway (*regia via*) leading either to the market, or from town to town, &c. the freehold and soil thereof, and the interest of the trees and other such profits thereupon growing, belong to the lord of the soil, or lord of the manor. *Dalt. 76.* And he may bring his action for digging therein, or any other like trespass.

4. The authority of justices of peace is limited only to common highways, and not to private ways; so that the presentment, &c. of a justice of peace of a private way, is not allowed to be good, *4 Mod. Rep. 38.*

5. If a way leads to a market, is a way for travellers, and has a communication with a great road, &c. it is a highway; but if it leads only to a church, to a village, fields, &c. there it is a private way. *Vent. Rep. 189.* Any cart, horse or foot way common to all people, is the king's highway, (whether it directly lead to any market-town or not) and a nuisance in any of the said ways is punishable by indictment. *6 Mod. Rep. 255.* And if there be an highway in an open field, when the fields are bad in the winter, travellers may go on the outlets of the lands adjoining, being warranted by custom; for the king's subjects are to have a free passage, and such outlets are parcel of the way. *1 Roll. Abr. 390. Dalt. 98.*

6. A private way, which leads from a village, &c. to the parish church or fields without any communication with a great road, is to be repaired by the village or hamlet, and sometimes by a private person (*contra* of highways, for there the whole parish shall be charged); if such a way be out of repair, every inhabitant may have an action, and for stopping a way to the church they may have an action upon the case. 1 Vent. 208.

7. All highways of common right are to be repaired by the inhabitants of the parish in which the way lies, unless there be some special matter to tax the repairs upon others; as where a person by an inclosure straitens a highway on both sides, though the parish repaired it before, yet now he is obliged to maintain it at his own charge; but if he lays open the inclosure, so that the way remains as it did before, then the parish is to repair it again. Cro. Car. 366. Term. Pasch. 7 Jac. 1. it was resolved, that all the county ought to repair a highway, where no particular persons are bound to repair; because the whole county have their ease and passage by it. Co. Rep. 13.

8. A person may be obliged to repair a way by tenure of lands, and lands have been often given for the maintenance of highways. See statute 22 Car. 2. c. 12. A particular person may be bound to repair a highway by prescription, and so may a corporation. Latch Rep. 206. The king by the common law might award his commission for amending the highways and bridges throughout the realm. Dalt. 77. And no highway can be changed, &c. without the king's writ of *Ad quod damnum*, and licence thereupon, on inquiry, whether it will be prejudicial to the publick, &c. 3 Cro. 267. A tenant at will of a house adjoining to a common bridge, may be indicted for permitting it to be so much out of repair, that it is ready to fall upon the queen's subjects passing, &c. Regina v. Watson, 2 Ld. Raym. 856.

9. Though private ways are to be repaired by the village, and sometimes by a particular person; yet publick ways are to be repaired by the parish, unless some others in particular are hereto obliged by custom or prescription; and even clergymen, who are liable to all charges imposed by acts of parliament, unless particularly excepted, are certainly liable to be charged for repairs of the highways; and 'twas so adjudged by Hale and the whole court. Trin. 37 Car. 2. B. R. 2 Lev. 193. 3 Keb.

6. Web v. Batchelor, S. C. is reported in 1 Vent. 273. The dictum must say, that the way is out of repair. Reg. v. Inclosure of Stratford, 2 Ld. Raym. 1169, 1170. and *ibid.* Inclosing land next adjoining to the highway, will draw upon the owner of the land the charge of repairing the highway; by 4, C. J. and Duncomb's case there cited.

10. The statutes which relate to the highways in general are, 3 P. & M. c. 8. 5 El. c. 13. 18 El. c. 10. 14 Car. 2.

c. 6. 22 Car. 2. c. 12. 2 W. & M. c. 8. 3 & 4 W. & M.
c. 12. 7 & 8 W. 3. c. 29. 8 & 9 W. 3. c. 16. 1 Ann. c. 18.
6 Ann. c. 29. 9 Ann. c. 18. 1 G. 1. c. 11. 1 G. 1. c. 52.
5 G. 1. c. 12. 7 Geo. 2. c. 9. 14 Geo. 2. c. 42. 18 Geo. 2.
c. 33. 26 Geo. 2. c. 28 & 30. 27 Geo. 2. c. 16. 28 Geo. 2.

How surveyors
of the highways
are to be chosen.

c. 17. & 30 Geo. 2. c. 12 & 30. I find no mention made in our law books of surveyors of the highways, before 2 & 3. W. & M. when a statute was made, wherein it was enacted, that the constables and churchwardens, &c. of every parish should yearly upon Tuesday or Wednesday in Easter week, call together a number of the parishioners, and then elect and choose two within the parish to be surveyors of the highways for the year following, who shall forthwith take that office upon them, under the penalty of a fine of 20s.

Surveyors have
power to turn
water-courses,
&c.

11. By stat. 5 El. c. 13. the surveyors have power to turn water-courses hurtful to the highways into any man's ditch; and to take the rubbish or smallest broken stones ready dug in quarries; and for default of any quarries, or rubbish in such quarries, to dig for gravel, sand, or cinders, in the grounds of any persons within the parish, (except houses, orchards, gardens and meadows) high adjoining to the ways wanting to be repaired, where gravel, sand, or cinders, are like to be found, filling up the pits; and of appointing six days in the year for the amendment of the highways. But by 26 Geo. 2. c. 28. all pits or holes dug by any person in any common, heath, or waste ground, for getting gravel, sand, stones, chalk, or other materials, for repairing highways, are to be immediately fenced off, whilst open; and within 14 days after digging for such materials, filled up, sloped down or fenced off; and so continued if not, one justice, on view, or oath of one witness, may order the same to be done, and if not done within 10 days after service of the order, the party shall forfeit, not more than 10s. nor less than 40s. to be laid out in filling up, sloping or fencing off the same, and towards repair of the roads.

What persons
are chargeable to
the highways.

12. By 18. El. c. 10. a cotager, if he be in the subsidy 5s. in goods, or 40s. in land, shall find two able men; every other person occupying a plough land in several parishes, shall be chargeable with a team or draught in that parish where he dwells; howbeit having intire plough-lands in several parishes he shall for every one of them find a team in the several parishes where they lie, although he be not inhabitant there.

How trustees
for lands given
to highways are
to act, &c.

13. By 22 Car. 2. cap. 12. trustees of lands given for maintenance of highways, &c. shall let them to farm at the most improved yearly rent without fine. The justices of peace in the open sessions may order the improvement and employment thereof (other than of lands given to colleges and halls in either university having visitors of their own) according to the will of the donor, if they find that the persons intrusted have been faulty.

chap. 58.

ity; and upon such orders appeal to *Chancery* liés, as to a decree of a charitable use.

14. The occupiers, and where there are none, the owners of houses, &c. adjoining to the highways, streets, &c. in the suburbs and liberties of *London*, borough of *Southwark*, and liberty of *Westminster*, which are or shall be paved, shall be liable to the scavengers rates, as by 14 *Car. 2. c. 2.* is appointed; and where any ground lies, so as there may be a dispute who ought to repair the same, the justices of the peace in their quarter-sessions shall determine it. *Ibid.*

15. If any fail to make their day's labour, or neglect to send their carriages, &c. the surveyors shall complain to the next justices of peace, who upon oath thereof by one witness may levy distress and sale of goods, for every day-labourer (without reasonable cause) 1 s. 6 d. for every man and horse 3 s. and for every cart with two men 10 s. The penalties to be employed for repairing the highways. *Ibid.*

16. We shall treat next, *First*, Of the duty of surveyors of the highways. *Secondly*, Of the power of the justices of peace relating to highways.

17. But the abovesaid statutes being in many particulars defective, the statute of 3 & 4 *W. & M. cap. 12.* was made, whereby it was enacted, that every year on the 26th day of *December*, unless that happen on *Sunday*, and then the day following, the parish officers, surveyors of the highways, and paritioners, must meet and make a list of a competent number of persons thus qualified. 1. They must have an estate of 10 l. *per annum*, either in their own right, or in the right of their wives. 2. Or they must be worth 100 l. in personal estate. 3. Or rent 30 l. *per annum*. If there are not any persons in the parish thus qualified, then a list must be made of the most sufficient persons.

18. The lists must be returned to two or more justices of the peace near the division in which the parish lieth, at a special sessions to be held on the third day of *January*, or within fifteen days after: For which purpose, the justices are to give notice of the time and place to the constables, &c. and surveyors of every parish within the division, at least ten days before. If the constables neglect to return such list, each of them forfeits 20 s. Out of this list so returned, the justices at that sessions do appoint one or more to be surveyors, &c. by an order under their hands and seals. Penalty of constables neglecting to return lists, &c.

19. Within six days after the person thus appointed has notice thereof given him by the constables, by leaving a copy of the order at the house of the party, he must take upon him the office. And if he refuse after being so nominated and appointed, and served with the order, then he forfeits 5 l. to be levied by warrant from the justices for the same division, or in default thereof

Occupiers of houses in London liable to be rated to scavengers.

The method of forcing people to do their days work.

The qualification of surveyors, and when to be chosen, &c.

Penalty of constables neglecting to return lists, &c.

Penalty of surveyors refusing to act.

thereof from the neighbouring justices upon oath made, &c. one moiety of the forfeiture is to go to the informer, and the other is to repair the highways, and the justices may appoint one or more surveyors, who upon notice must take up him or them the office, &c. under the same penalty.

Surveyors duty,
&c.

20. Within 14 days after the acceptance of his office, he must and so from time to time every four months, view the roads and bridges, &c. by 3 & 4 W. & M. c. 12. and 1 Geo. 1. c. 52. He must present upon oath to the special sessions, such ways which are not in repair, or he forfeits 5 l. unless the special sessions shall allow his excuse, by 1 G. 1. c. 52. And by the said statute 3 & 4 W. & M. c. 12. he must every four months from time to time give publick notice in the parish church the next Sunday after sermon ended, of what default he finds; and if not amended within thirty days afterwards by those who ought to repair, &c. then the surveyor must within other thirty days next following amend the same. He must give an account upon oath at a special sessions, of all money that comes to his hands, and how disposed, &c. and if any remains, he must deliver it to the next surveyor, or forfeit double the value of what the justices shall judge in his hands, to be levied by warrant of two justices one part to the informer, &c.

21. For any neglect of his duty he is to forfeit 40 s. one moiety to the informer, the other to amend the highways; to be levied by a warrant from two justices. But if he neglect to give an account of the state and condition of the highways, more especially of such faults and defects as want to be amended, and of those who are bound to find labourers and teams, he forfeits 5 l. one moiety to the informer, the other to amend the highways; unless the special sessions allow a reasonable excuse.

1 Geo. 1. c. 52.

22. The first seasonable time that comes, must be taken by the surveyors to repair the ways, so as it may be done before harvest, if possible; and they must repair those ways first, which the justices in their special sessions shall order to be repaired, if any such order there be. He is to appoint six days for providing materials to amend the ways, giving notice of the several days by him appointed; at which time all persons liable must work, and the ways must be amended before the feast of St. Luke. If a person be indicted upon stat. 22 & 23 Car. 2. cap. 17. §. 6. for not working in the repair of the highways, the particular days appointed must be mentioned in the indictment; for it will not be sufficient to say only, that six days were appointed between such and such days, for the work. And notice ought to be given accordingly, otherwise the appointment is ill. *Regina versus Kime*, 2 Ld. Raym. 858.

What persons
must send out
teams, &c.

23. Every person keeping a team of horses, must send out a cart and two able men; and if he keep oxen, then he must send out a wain, and to work eight hours every day so appointed by

the surveyor, on pain of 10 s. for every default of a cart with two men; and 3 s. for every man and horse, to be employed in mending the highways, and as many draughts as he requires, so many he must send out. If the surveyors do not send out all the carriages in the parish necessary, then the person whose carriage is spared must send out two able men, or forfeits 10 s. for every man not sent. Every one, be he labourer, and journeyman, or householder able to labour, and being no hired servant by the year, shall by themselves, or one sufficient labourer, or every of them, work each of these six days, or forfeits by statute 22 Car. 2. c. 12. 1 s. 6 d. per day.

24. Formerly 100 acres, but now 80 acres are deemed, but by statute 7 & 8 W. 3. c. 29. 50 l. per ann. is a plough-land for highways. Raym. 186.

25. In such counties where carts are not used, the inhabitants must send horses, according to the custom of the place, with able persons, &c. under the like penalty.

26. All lands in the parson's hands, except only his glebe, is liable to be taken for highways.

27. For levying the penalties, the surveyor may complain to the next justices, &c. who on oath made of the default, may issue their warrant to levy the forfeiture by distress and sale of the lands, &c. Method of levying the penalties, &c.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
On a man neglecting	00	01	06
For every man and horse, &c.	00	03	00
For every cart with two men	00	10	00

every day they shall neglect; and the penalties when levied shall be employed towards the amending the ways.

28. If bushes, boughs, &c. grow, stand or over-hang any highway not twenty foot broad, the owner of the soil within ten days after notice given by the surveyors, is to cut them down, and be liable to the penalty of 5 s. to be levied by distress on warrant of two justices on oath of one witness; one moiety to go to the informer, the other towards repairing of the ways. 4 W. & M. c. 12.

29. A surveyor may make every cart way leading to a market town eight feet broad at least, and causeways for horses must be three feet broad. *Ibid.* The surveyors, &c. may take stones and rubbish already dug out of any quarry without leave of the owners, and they may gather stones in any lands without trespass, and may dig for gravel in any ground near the highways, but it must be not in a house, garden, orchard, or meadow; and it must be but in one pit or hole not above 20 feet in length and breadth, which must be filled up by order of the surveyors within one month, under penalty of five marks; but they cannot dig for stones without leave of the owner of the land. 5 E. 1.

30. If any person by getting any sand, gravel, &c. for repairing

pairing any highways, or any other purpose, shall make a pit or hole in any common, heath, or waste ground, he shall within fourteen days after cause the same to be filled up, sloped down or fenced off, and so continued, under a penalty not exceeding 10*l.* nor less than 40*s.* *Stat. 26 Geo. 2. c. 28.*

30. Those who are convicted by oath of one witness before one justice of the division, or upon his own view, of pulling up, cutting or removing any post, block, great stone, bank of earth, or other security of a horseway or causeway from waggons, carts, &c. forfeit for every offence 20*s.* to be levied by his warrant, by distress and sale, &c. one moiety to the surveyors to repair the ways, the other to the informer. 8 & 9 *W. 3. c. 16.*

How they may be reimbursed their money expended, &c.

31. In parishes where the surveyors are forced to buy sand, gravel, or other materials with their own money, in order to be reimbursed, they must attend the justices at a special sessions, and swear what money they have expended, &c. and then two justices at the sessions may make a rate upon every inhabitant, parson, vicar, and other occupier of lands, tithes, woods, &c. in the parish; which rate being allowed by the said justices their special sessions may be levied on persons refusing to pay by distress, &c. 3 & 4 *W. & M. c. 12.*

Penalty of those refusing to scour their ditches, &c.

32. If those who have lands adjoining to the highways, which ditches ought to be scoured, neglect to scour them as often as there is occasion, and to lay trunks or bridges where there are cartways into any ground, that the water may have a free passage, for ten days after notice from the surveyors, they forfeit 5*s.* to be levied by warrant of two justices of the same division, &c. upon oath made, &c. one moiety to the informer, the other to amend the ways. 3 & 4 *W. & M. c. 12.* And the person who ought, and who neglects or delays for thirty days after notice by the surveyor, to scour and keep open his ditch near the highways, on oath thereof before the justices at the special sessions, forfeits 2*s.* 6*d.* for every eight yards of ditching not scoured and kept open, to be levied by warrant under the hands and seals of the justices in special sessions by distress and sale, &c. 1 *Geo. 1. c. 52.* If in scouring the ditches they lay the soil in the highways, and suffer it to lie there eight days after notice, they forfeit not exceeding 5*l.* nor under 20*s.* to be levied and employed, as aforesaid. *Ibid.*

Surveyors have power to make ditches and drains, &c.

33. Surveyors have power to turn any spring or water-course out of the highways into those ditches, and where the ditches already made are not sufficient to carry away the water, they may make new ditches and drains, in and through the lands adjoining, which they must keep scoured; and to that purpose may come with workmen upon the said lands without being trespassers. 3 & 4 *W. & M. c. 12.*

Penalty of persons laying timber, &c. in the highway.

34. All persons laying any thing in a highway not twenty feet broad, forfeit 5*s.* to be levied and employed as aforesaid, and if timber, stone, hay, straw, stubble, &c. or other materials

making dung, on any other pretence, be laid in any highway, those who possess lands next adjoining may remove and dispose thereof to their own use; nor can they lay logs or timber in the highways, though there is sufficient room for travellers left. *Ibid.*

35. All matters concerning the highways must be determined in the county where they lie, and not elsewhere, and no prosecution but within six months after the offence committed. The party grieved may appeal from any act done by the justices to the quarter sessions, whose order shall conclude all parties, and no presentment, indictment, or order shall be removed by *certiorari*. Nor no fine, issue, penalty, or forfeiture for not amending highways shall be returned into the exchequer, or other court; but shall be levied into the hands of the surveyors to be applied towards the amendment of such highways. And if any action be commenced against those who put that act in execution, they may plead the general issue, and give the act itself and the special matter in evidence; and if the plaintiff be non-suited, discontinued or a verdict given against him, the defendant shall have double costs. 3 & 4 W. & M. c. 12.

Where matters concerning highways are to be determined, &c.

36. By stat. 7 & 8 W. 3. c. 29. surveyors compounding with, or receiving any reward whatsoever of offenders against that or any other act about highways, by way of conniving at, or overlooking such offences, forfeits 40 s.

37. If any overseer of the highways neglect to erect or fix a stone or post, where two or more crossways meet, with an inscription thereon in large letters, containing the name of the next market town, to which each of the adjoining highways leads, according to the precept to him directed by the justices at their special sessions for the highways, he forfeits 10 s. to be levied by warrant from one justice, and employed towards erecting such stone or post, and the overplus (if any) in repairing the highways. Stat. 8 & 9 W. 3. c. 16.

Surveyors neglecting to erect or fix a stone or post at crossways forfeit 10 s.

The Form of a Presentment of a Highway out of Repair made by a Surveyor.

38. **I** A. B. surveyor of the highways, within the parish of, &c. in the county of, &c. do hereby present that the highway leading from, &c. to, &c. in the said parish, is very much out of repair, and dangerous to all travellers who pass that road, and that the inhabitants of the said parish of, &c. ought of right to repair and amend the same. I do also present upon oath, that C. D. of the parish of, &c. has lately laid several great logs, and other timber in the said highway to the great annoyance thereof, &c.

The

*The Power and Duty of Justices of Peace about
Highways.*

When justices
are to hold a
special sessions
for highways.

39. **B**Y stat, 3 & 4 W. & M. c. 12. the justices of the division are to hold a special sessions in the division, &c. every year on the third of January, or within fifteen days after of which they are to give notice ten days before they hold the same, to every constable within the division.

*The Justices Precept to the Constables to bring
a List of Persons fit to serve as Surveyors.*

40. **T**Hese are to give notice, That on Monday the third of January next, at the house of, &c. there will be a special session held for putting the acts of parliament in execution relating to the repairing the highways, when and where you are hereby required personally to be and appear, and to bring with you a list of the names of the persons within your parish fit to be surveyors of the highways for the year ensuing, (viz.) such as have a personal estate of 10 l. per annum, have a personal estate to the value of 100 l. or as do rent 30 l. a year; and if you have not any such list, of the names of the most sufficient persons in your said parish according to the direction of the acts of parliament in that case made and provided, &c.

41. They are to nominate under their hands and seals out of the lists brought unto them one or more surveyors of every parish within the division for the year ensuing; and upon the refusal of the person so nominated, and paying the forfeiture of 5 l. by warrant granted upon oath of one credible witness, then they are to nominate some other fit person. 3 & 4 W. & M. c. 12.

*An Appointment of a Surveyor of the Highway
by Justices of Peace.*

At a special sessions held for the highways on, &c.

42. **W**E whose names are hereunto subscribed, being his majesty's justices of the peace in the county of, &c. do hereby appoint A. B. of, &c. (one of the persons mentioned in a list this day returned to us by, &c.) constable of, &c. surveyor of the highways in the parish of, &c. aforesaid, for and during the space of one whole year next ensuing the date hereof, according to the form of the statute in that case made and provided. Given, &c.

43. Two justices may allow a reasonable excuse of a surveyor, viewing, or not presenting every four months in what condition the ways are.

44. If notice is given on *Sunday* after sermon next after any fault found, if within thirty days after such notice, the party ought to amend it neglect so to do; and if the surveyor within thirty days afterwards doth amend it, and the party neglecting refuseth to pay the charges; then upon oath made of *&c.* as aforesaid, the surveyor shall be repaid such charges the justice shall think fit, which is to be levied by his warrant, *&c.*

Persons neglecting to amend ways after notice, surveyors may amend.

45. They are to hold a special sessions once in four months, summon the surveyors thereunto, and to tell them what they are obliged to do; and at this sessions the justices may by writing under their hands and seals order the reparation of those roads which do most want repairing in that hundred where the session is, which shall be first repaired, and in what time and manner. 3 & 4 W. & M. c. 12. and 1 Geo. 1. c. 52. They may likewise at this sessions examine on oath any person who can give an account of money which ought to be applied for mending the highways, and levy the penalties, and dispose of the forfeitures; one moiety to the surveyors of the highways where the offence was done, towards the repairs thereof, and the other to the informer. 1 Geo. 1. c. 52. And the next quarter-sessions make such order as they think fit, where any person shall himself aggrieved. Stat. 3 & 4 W. & M. c. 12.

Justices may examine on oath persons who can give an account of money given to highways.

46. If any fine or forfeiture imposed on any parish be levied on any particular inhabitant, then upon complaint thereof to the justices at the special sessions, they or two of them may by warrant cause a rate to be made to repay the person or persons, which rate the surveyors shall levy and pay within a month of the making thereof. 3 & 4 W. & M. c. 12.

47. The justices in their quarter-sessions not being satisfied the ways can be amended without the help of the said act 3 & 4 W. & M. c. 12. may cause assessments to be made on any person usually rateable to the poor, not exceeding 6 *d.* in the pound for lands, nor 6 *d.* for every 20 *l.* personal estate: the assessments must be made and levied by such persons, and in such manner as the justices in their sessions shall direct and appoint, and the money must be employed according to their order for repairing the highways; and if not paid within ten days demand, may be levied by distress, notwithstanding the six weeks work hath been performed. Any person aggrieved by such assessment may appeal to the quarter-sessions, whose orders shall be final. 3 & 4 W. & M. c. 12. and 1 Geo. 1. c. 52.

Justices in quarter-sessions may cause assessments to be made, &c.

48. The next quarter-sessions may make such order as they think fit, where any person finds himself aggrieved by any done in the execution of the said stat. 1 Geo. 1. c. 52. except

Persons aggrieved may appeal to next quarter-sessions.

cept for the neglect of scouring ditches, and carrying away soil taken out of the same, or who shall not carry away timber, straw or dung left in the highways, or not remove other annoyances by water-courses, &c. 1 Geo. 1. c. 52.

49. The justices of *Middlesex* may at their quarter-sessions make rates for paving *Kensington*, &c.

Justices neglecting to do their duty, forfeit 5 l.

50. The justices neglecting or refusing to do what is required by the act, forfeit 5 l. one moiety to the prosecutor to be recovered by action of debt in any of the king's courts of record, the other moiety to be employed to amend the highways within the prosecutor liveth. 3 & 4 W. & M. c. 12.

Quarter-sessions may appoint scavengers, and make assessments in all cities and market-towns, &c.

51. The quarter-sessions may appoint scavengers, and order the repairing and cleansing the streets in any city or market town, and may appoint persons to make assessments on every owner and occupier of lands and houses equally, not exceeding 6 d. per pound per annum, to defray the charges of such scavengers; which assessment being allowed under the hands and seals of the justices, &c. may be collected by such persons as they shall point, and be levied by their warrant on the goods of those who shall not pay it within eight days after demand; and the money thus raised shall be employed and accounted for according to the direction of the justices for repairing and cleansing the streets. 1 G. 1. c. 52.

52. The servants or clerks of the justices at their special sessions shall not take any thing of a surveyor for his oath, or account given in to them, upon the forfeiture of 10 l. to be recovered in any court of record. *Ibid.*

Any justice on view may present any offences concerning highways, &c.

53. Any justice may upon his own knowledge present at general sessions any offence concerning highways, upon which the court may assess a fine, though the offender is absent; which fine shall not be taken off, unless the party presented do consent to the amendment of the ways by 2 & 3 P. & M. c. 8. and c. 12. also he may present defaults of surveyors, and of all other persons relating to the highways, &c.

The Form of which Presentment is as followeth

54. Berks, **B**E it remembered, that J. S. of, &c. one of the justices of the lord the king, assigned to keep the peace in the county aforesaid, as also to hear and determine divers pleas, trespasses, and other misdeeds perpetrated in the said county at this general sessions of the peace for the county aforesaid, being held at Reading within the county aforesaid on the 22d day of October the year of the reign before A. B. &c. justices of peace in the county aforesaid, by virtue of a statute of the lady Elizabeth, late queen of England, in a parliament held at Westminster on the 12th day of January

year of her reign, and according to the form and effect of the statute, intituled, An act for the continuance of the statute, made 3 & 4 P. & M. for the amendment of highways, upon his view presented, that a certain common and antient highway within the parish of M. in the county aforesaid, which leads from the parish of F. to the town of L. both in the county aforesaid, the same being a market-town, from a certain place called B. in the parish of M. aforesaid, to a certain place called S. in the parish of M. aforesaid, is not well and sufficiently repaired and amended, according to the form and effect of the statute aforesaid, but that the same is now in great decay; so that the subjects of the said lord the king cannot pass or travel in and by the same without great danger in the highway aforesaid with their horses, waggons, carts, carriages, and other necessities as they used and ought to do.

A presentment by a justice of peace for not repairing a highway, said, upon his own knowledge; whereas it ought to have been upon his view; it was quashed for this fault. *Comb. 65.*

The Order thereon is as followeth.

UPON which at the same general sessions of the peace there held the day and year aforesaid, the aforesaid justices of the lord the king, assigned to keep the peace of the said lord the king in the county aforesaid, have assessed and imposed a fine of *10l.* to be levied on the inhabitants of the said parish of M. by default of whom the said highway is not sufficiently repaired according to the form of the statute aforesaid, if the said highway shall not be sufficiently repaired and amended before the feast of St. John the baptist next ensuing the date hereof.

56. N. B. That upon such a conviction, the want of repairs And conviction of the highways cannot be traversed; but the defendant may not be traversed. And that some other person ought to repair, and traverse that person ought not; but the decay being upon view of a justice of peace cannot be gainsaid or traversed. *2 Saund. Rep. 160.*

57. Every justice knowing that any officer has received estreats for levying forfeitures, &c. and neglected, or not accounted, and paid it between the first day of March and the last day of April to the constables, &c. may present it.

58. Two justices (*quorum unus*) may take the account of a petty constable, may compel him to pay the fine levied to the high constable, or commit him; but then he is to be allowed 8 *d.* for pound for collecting, and 12 *d.* for the fee of the estreat. and any one justice, on complaint, may compel those who have been constables, to pay the arrears of money by them levied on estreats. Two justices (*quorum 1*) may take the account of high constable, &c.

59. One justice of peace, upon his own view, or upon conviction by the oath of one witness, may commit him who refuses any person employed to put the acts concerning highways execution, or of rescuing goods distrained, until he pay 40 s. the surveyor, if he refuse to pay the same within seven days after notice of such conviction. 22 Car. 2. c. 12.

60. In whose soever ground or side a hedge shall be, to the owner of that land belongs the keeping the same hedge, and the ditch adjoining and belonging to it on the other side, in pair and scoured. The soil of highways, publick or private belongs to him, on whose land it is on each side of it. *Berry Goodman, 2 Leon. 148.*

Five justices at quarter-sessions have power of enlarging highways, &c.

61. By stat. 8 & 9 W. 3. c. 15. five justices at quarter-sessions have a power of enlarging highways, not to take in above eight yards in breadth. No power to pull down any house, take away the ground of any garden, orchard, court, or yard. Justices may impanel a jury, who must take an oath, that they will assess such damages to the person, &c. whose ground taken, as they shall think reasonable, not exceeding twenty years purchase; besides reasonable recompence for a new ditch and fence to that side of the way that shall be so enlarged; and also satisfaction to any other person injured by, &c. Five justices may order one or more assessments to be made on the inhabitants of the parish, who ought to repair the same: money raised to be accounted for, and employed according to justices order, towards purchasing such lands, &c. and enlarging highways, &c. on refusal of payment in ten days of aforesaid rates, overseer, by justice's order, may levy by distress, &c. no assessment to exceed 6 d. per pound in one year; justices to give notice to owners of the ground to appear at sessions, and shew cause why ways should not be enlarged. Persons aggrieved may appeal to judge of assize at the next assize only, who may affirm or reverse the sentence, and if they see cause to affirm, to award costs against the appellant. And after an order is made for the laying out of ground for enlarging highways, the owner hath liberty in eight months after to cut down any wood or timber growing upon the ground; or upon neglect, the justices shall sell it, and deliver to the owner the value. Highways inclosed after a writ of *ad damnum*, &c. persons aggrieved by such inclosure may appeal to the quarter-sessions next after such inquisition, who have a power finally to determine such appeal. See 2 W. & M. c. 8.

No cart or carriage to be drawn with above six horses, &c.

62. By stat. 6 Ann. c. 29. no cart or carriages, except for bandry, (manuring of land, hay, straw, are excepted, and 1 G. 1. c. 11. threshed corn, coal, chalk, timber for shipping materials for building, stones of all sorts, or ammunition, &c. for his Majesty's service) shall be drawn with above six horses on forfeiture of 5 l. to the amending the ways, and the informant to be levied by distress of all or any of the horses, &c.

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warrant from one justice; if not paid in three days, to sell the same, rendering overplus, charges first deducted. Surveyor neglecting to put the act in execution, forfeits 5 *l*.

63. By stat. 9 *Ann. c. 18.* 'tis enacted, That any person may ^{The method of} train or seize horses, oxen, or beasts, drawing with more than ^{seizing, &c.} horses against the stat. 6 *Ann. c. 29.* and deliver them to the surveyor or other parish officer of the place where the offence shall be committed. And if the penalty of 5 *l.* inflicted by that act is not paid in three days, the surveyor or other parish-officer by a warrant of one justice sell the distress, and deliver the money to the justice, who must distribute it, one moiety to the surveyor, the other to the prosecutor, as by that act is directed.

64. The person seizing, &c. but neglecting to bring the cart to the surveyor or parish officer, forfeits 20 *l.* to be levied by warrant of one justice by distress and sale, &c. and for want of proof to be sent to the gaol till paid; one moiety to the repairs of the highways, the other to the informer; the surveyor neglecting to deliver the sum by him received to the justice, forfeits 10 *l.* to be levied as aforesaid.

65. Any person employed by a carrier, or another, and subject to the penalties in that act, and driving or assisting to drive a travelling waggon or cart with more than six horses, &c. shall forfeit 5 *l.* to be levied and disposed as aforesaid. And if six horses, &c. are not sufficient to draw up hill, or out of any foul way, any person may, by consent of the owner or driver, &c. add more horses, &c. from any other cart or waggon on the road. 9 *Ann. c. 18.*

66. By stat. 5 *G. 1. c. 12.* no waggon travelling for hire, shall be drawn with more than six horses, either in length or in pairs, or ways; and no cart travelling for hire shall be drawn with more than three horses, on forfeiture by the owner or driver of all the horses above six in the waggon, with all the furniture belonging to the said horse or horses, and all the horses above three in the cart, &c. (extended to four by 16 *G. 2. c. 29.*) for the use of the constable, or other parish-officer of the same, next or adjacent to where seized, who is to keep the same, till the person making the seizure hath made proof, upon oath before any one justice of the offence committed, which said justice shall issue his warrant to the constable, &c. to deliver the horse, &c. forfeited to the party or parties who seized the same, paying such reasonable charge for keeping the same, as the said justice shall allow.

67. No waggon travelling for hire, having the wheels bound ^{How the wheels} with iron streaks, or the tire of a less breadth than two inches and one ^{are to be bound,} when worn, or being set or fastened on with rose headed ^{&c.} nails, shall be drawn with more than three horses, on forfeiture of the horses above three by the owner or driver, together with their furniture, to be seized and recovered as aforesaid.

Any person by force or otherwise hindering or endeavouring hinder such seizure, on proof made of it by one witness before one justice, shall for the said offence be committed to gaol three months, without bail or mainprize, and shall forfeit to be levied by distress by warrant from the said justice; if money not paid in three days, sale, rendering overplus to the owner after charges deducted: Not to extend to carts and waggons employed about husbandry, manuring land, carrying of cheese, butter, hay, straw, corn unthreshed, coals, chalk, or any one tree, piece of timber, or any stone, or block of marble.

68. Caravans covered, carriages of noblemen and gentlemen for their own private use, or timber, ammunition or artillery in his Majesty's service, his heirs and successors, are excepted. In any action commenced, and the plaintiff discontinue his suit, he shall be nonsuited, or judgment given against him, the defendant shall recover full costs of suit. 5 Geo. 1. c. 12. And by 14 Geo. 2. c. 42. §. 6. the said stat. 5 Geo. 1. c. 12. shall extend to waggons and carts, and to the owners and drivers thereof, their horses, with the geers, bridles, halters, and accoutrements, whether travelling for hire or not, and the offenders against either of the said acts, are to be subject to the penalties in the said act of 5 Geo. 1. and their horses, with the geers, &c. for three days after the offence remain subject to such seizure and distresses, as they would have been if seized during commission of the offence.

No person to carry within ten miles of London above seven hundred and a half of bricks, &c.

69. By stat. 6 Geo. 1. c. 6. no person shall carry in the city of London and Westminster, or within ten miles thereof, in carts or waggons having their wheels bound with iron, at any load more than seven hundred and a half of bricks, one chaldron of coals, twelve sacks of meal of five bushels to the sack, twelve quarters of malt, on forfeiture of one of the horses, the gear, furniture, &c. to any one who shall seize the same in such manner as the penalties are directed to be levied and applied, by the stat. 5 Geo. 1. c. 12. relating to carriages drawn on the highways. Oath is to be made of the offence before a justice who on conviction is to order the forfeiture to the seizer, &c.

70. By stat. 18 Geo. 2. c. 33. a clause of 3 & 4 W. 8. enacting, that "inhabitants within the weekly bills, who are to be off the pavement, and brewers and scavengers, may use of carts, &c. with wheels shod with iron, and not more than six inches in the fellies, and drawn with more than two horses," is repealed. This act recites 2 W. & M. for drawing in London with two horses only, and gives liberty to draw with three horses, and for drawing with more than three horses the penalties by 2 W. & M. given for drawing with more than two. This act also directs, that no person shall drive carts or waggons unless the master's name, and number of the cart, be placed in some conspicuous part thereof, and the master is to enter

and place of abode with the commissioners of hackney-coaches, for which he is to pay 1s. And the wheels of every cart, car, or dray, within the bills of mortality, are to be six inches broad in the felly, and not wrought about with iron, nor drawn with more than three horses, after they are up the hill from the water side, under the penalty of 40s. and any person may seize and detain the cart, &c. or any of the horses drawing the same, till the penalty be paid; and persons within the bills of mortality may have their wheels, when worn, bound round with a tire of iron, provided it be six inches broad, flat, and not on with rose-headed nails.

71. Waggon, or other four wheel carriages, having the felly of the wheels of the breadth or gage of nine inches or upwards, may travel on any highway with any number of horses, or beasts of draught, not exceeding eight; and any cart or other two wheel carriage, having the felly of the wheels of the like breadth, with any number of horses or beasts of draught, not exceeding five, without incurring any penalties or forfeitures, for driving the same with a greater number of horses or beasts of draught than are now allowed by law. 26 Geo. 2. c. 30. and by stat. 28 Geo. 2. c. 17. §. 9. four wheel carriages, if drawn by no more than six oxen, in pairs, and two horses, or eight oxen in pairs, and one horse; and two wheel carriages, if drawn by no more than six oxen in pairs, and one horse, or four oxen in pairs, and two horses, may travel on turnpike roads, though the felly of their wheels be not nine inches broad.

72. The drivers of carts, cars, drays, or waggon, that shall ride on such carriages, not having some other person on foot or on horseback to guide the same, (except drivers of carts drawn by one horse, or two horses abreast, conducted by some person holding the reins) and the drivers of any carriage on any street or highway, that shall negligently or wilfully hurt any person, being convicted of such offence, by confession or on oath of one witness before one justice, shall forfeit any sum not exceeding 10s. or be committed to the house of correction for any time not exceeding one month; and any person who shall see the offence committed, may apprehend such offenders, and immediately deliver them to a constable or other peace officer, to be conveyed to a justice, to be dealt with according to law, by 27 Geo. 2. c. 16. And by 30 Geo. 2. c. 22. the drivers of any carriage in London or Westminster, or in any publick street within the bills of mortality, that shall by negligent or wilful misbehaviour interrupt the free passage of the King's subjects; and persons placing or leaving any empty waggon, cart, or any other carriage in any publick highway, so as in any manner to interrupt or hinder the free passage of any other carriage, or of the King's subjects, except only during a reasonable time for load-

ing or unloading : And also the drivers of waggons, carts, or drays, or any other carriage, offending in manner mentioned in the said act 27 Geo. 2. c. 16. on any publick highway ; interrupting the free passage of any other carriage, or the King's subjects on any highway ; and the drivers of any empty or loaded waggon, cart, or other carriage that shall refuse or neglect to turn aside, or make way for any coach, chariot, or loaded waggon, cart, or other loaded carriage, shall, on conviction in manner mentioned in the said act 27 Geo. 2. for any sum not exceeding 20s. to be levied by distress, and want of sufficient distress, be committed to the house of correction, or some other prison, to be kept to hard labour, not exceeding one month. And all penalties and forfeitures for offences against this act on the publick highways, are to be moiety to the informer, and the other to the surveyors of highways in the parish where the offence is committed, to be applied in the repair of the highways. And if the offender refusing to discover his name and place of abode to the justice before whom he shall be brought, shall immediately be delivered over to the constable or other peace officer, and by him conveyed to the common gaol or house of correction, there to remain till he shall declare his name and place of abode to the said justice, or to some other justice.

73. The owners of common stage waggons or carts, travelling with or using the same, by themselves or servants, having the fellies of the wheels of less breadth and gage than six inches, or six inches from side to side, over and above what they are obliged to by law, are to have written or painted on the tilt, or on some other conspicuous part of their waggon or cart, in large and legible characters, the words following, *viz. Common Stage Waggon, or Cart*, under the penalty of forfeiting of their horses or beasts of draught, (not being the shaft or thill horse) with all the geers and accoutrements to such horse &c. belonging, to the use of the person seizing the same. 28 Geo. 2. c. 17. §. 14.

74. Persons who are bound to repair the pavements before their own houses at their own costs, are also obliged to contribute to the payment of their scavengers rates ; for as to the paving before their own doors, they have the principal benefit of it, and that is no reason to excuse them from parochial duties. 5 Mod. 68. *Rex v. Inhab. Newington.* 1 Salk. 356.

75. Justices of peace must particularly express what days are appointed for working on the highways, and not appoint six days generally between such a time and such a time. On indictment for not working towards reparation of the highways according to the statute, setting forth that six days *inter* such a time and such a time were limited, and the defendant did not work upon any of the days ; the indictment held naught, for the partic-

ways ought to be set forth. *Reg. v. Kime, 1 Salk. 357. Pasch. Ann. B. R.*

76. If a way be foundrous, and there be outlets from the land If a way be foundrous, people may travel upon the soil, tho' sown with foundrous, people may travel on the soil, tho' sown with corn, he by that hath bound himself to repair the highway, tho' the parish did it before; but if he lay it open again, then he is &c.

no longer obliged to repair it. *1 Cro. 366. Trin. 10 Car. 1. Ancomb's case, Roll's Abridgment 390. Saund. 160. N. B.* It is not enough for parishioners to work the full six days yearly on the highways, except that thereby the ways are sufficiently repaired; for if they be not, the whole town may be indicted; and a highway laying out of any parish, ought to be repaired in the whole county.

77. On an information in the crown-office for not repairing Case of an information in the highway, they say, one part of the parish ought. By the information in the crown-office, &c. chief justice you may plead Not guilty, and give in evidence that part of the parish that ought to repair.

78. If a manor be held by the service or tenure of repairing Manor chargeable with repairs of highways continues so in whose hands soever it is. common highway or bridge, and that manor afterwards comes to be divided into several hands, every one of the alienees, being tenants of any parcel, either of the demesnes or services, shall be liable to the whole charge, and are contributory among themselves. And though the manor subject to such charge comes to the crown, yet the duty upon it still continues, and all claiming under the crown afterwards shall be liable to indictment or information for want of repairs. *Salk. 358.*

79. It is not justifiable to stop one way (which was bad) and lay out another (without authority). *1 Cro. 266. Pop. 142.* An action for stopping or incroaching upon an highway is not maintainable without particular damage, and the usual way is by indictment.

80. If a man be obliged to repair the highway *ratione tenuræ* certain lands, although he lay those lands open to the said way, he continues still liable to repair it. *Trin. 21 Car. 2. Roll. 406. Saund. 160, 161.* An indictment will not lie for a common private way, but an action on the case. *2 Vent. 208. N. B.* No actions are properly under the cognisance of the surveyors of the highways, unless they are common highways.

81. He that hath a plough-land, though he hath no plough, doth suffer his land to lie fresh, yet he is to find a team for work; and so it hath been agreed by the judges. *Mich. Jac. 1.*

82. Distress for rent-service cannot legally be made in the Distress for rent cannot be taken in the highway, &c. highway, by stat. *Marlb. c. 75. 3 Cro. 710.* and where a lord distrains in the highway, the tenant may have an action of trespass, or make rescous. *17 Ed. 3. c. 1. &c.* and there be no prescription against a statute. *9 H. 6. 56, &c.*

Persons, &c.
must work with
pick-axes, &c.
eight hours a
day, &c.

83. Persons and carriages are to be provided with shovels, spades, pick-axes, and other tools and instruments necessary, and shall work eight hours in the day. Stat. 22 Car. 2. c. 12. places where carts are not used, the inhabitants shall send horse according to the custom of the place with able persons, under the like penalties.

84. If a man hath a plough-land in several parishes, he shall be chargeable only in the parish where he lives; but if he keep several plough-lands in several parishes, he shall be chargeable in every parish. 18 El. c. 10.

If a man keeps
several draughts,
he must send a
team for each
draught, &c.

85. He who keeps a draught and but two horses, ought to attend therewith for reparation of the highways. Dalt. 105. If a man keeps several draughts in a parish, he is obliged to send a team for each draught, whether he occupy any land in the parish or not, and he who occupies several plough-lands ought to send a team in like manner to send a team for each, whether he keep a draught or not. Raym. 186. 3 Keb. 567. If the owner of land neither occupy them, nor let them, but suffer them to lie fallow, he shall be charged as much as if he had occupied them. Pa. 389.

And where defendants have made a highway as good as new, it is capable of being made, it is said, this shall not discharge them on an information, though it may be a mitigation of the fine. 3 Salk. 183. But the defendants are not bound to put the highway in better repair than it has been time out of mind. v. Cluworth, 1 Salk. 358. 6 Mod. 163.

Where statute
work falls short,
quarter-sessions
may cause assess-
ments to be
made, &c.

86. Where the statute work falls short in repairing of highways, the justices in their quarter-sessions being satisfied thereof, may cause assessments to be made on every person usually liable to the poor, not exceeding 6d. in the pound of the yearly value of lands, &c. which assessments not being paid in ten days after demand, may be levied by distress. Stat. 3 & 4 W. & M. c. 12. And notwithstanding the six days work have been performed, these rates may be made. Stat. 1 Geo. 1. c. 52.

Form of an Assessment for repairing of Highways

87. **A**N assessment made on the several persons herein of and by the justices of the peace mentioned, inhabitants of the parish of, &c. in the county of, &c. for the repairing and amending of the highway in the said parish, the year, &c. the same being two-pence in the pound for every pound rent by the year, in pursuance to an order made by the quarter-sessions of the peace held for the county of

made by
day of

whose names are hereunto subscribed
1739.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>A. B. Esq;</i>	0	7	0
<i>C. D. Gent.</i>	0	5	0
<i>E. F. Yeoman.</i>	0	5	0
<i>G. H. &c.</i>	0	6	0
<i>J. K. &c.</i>	0	4	0

We whose names are hereunto subscribed, his Majesty's justices of the peace for the county of M. (one whereof being of the quorum) do approve of, allow and confirm the foregoing rate made for the highways. Given under our hands and seals this, &c.

88. By stat. 7 & 8 W. 3. c. 29. if the 6 *d.* in the pound ordered by 3 & 4 W. & M. c. 12. be not sufficient to repair the ways after the same is levied and imployed, the justices in their special sessions held every four months may order the whole parish to make good the repairs thereof.

89. By former statutes the penalty was forty shillings for neglects of surveyors in putting the laws in execution for repairing the highways; but by the statute 6 Ann. c. 29. the forfeiture is made five pounds; and by 1 Geo. 1. c. 52. persons misapplying fines, penalties, or forfeitures laid on surveyors or others for not doing their duty in amending the highways, are liable to the like penalty of five pounds. Justices neglecting or refusing to do what is required by the stat. 3 & 4 W. & M. c. 12. for the highways, shall forfeit 5 *l.* by the said statute. By stat. 24 G. 2. c. 43. all penalties and forfeitures, imposed by that or any former act concerning highways, are wholly given to the informer, or person who shall sue for the same. But, *quære*, whether this act was intended to extend to highways in general, or to be confined to turnpike roads only.

90. By 7 Geo. 2. c. 9. surveyors of the highways, that shall find any highway deep or foundrous, and the hedges so high as to prevent the benefit of the sun and winds to the highways, are empowered to present such hedges to the justices at their special sessions held for such purposes; who, or any two of them, on summoning the occupiers of the lands whose hedges are presented, to shew cause why the hedges should not be new made or cut low; and being satisfied that the way is deep and foundrous, and damaged by the height of such hedges; are to issue a precept to the surveyors, to give notice in writing to the parties, that they are required to new make, or cut low the said hedges, within 30 days after such notice, (provided such notice be given between the last of September and first of February); and in case of neglect, the surveyors are to cause the hedges to be new made, or cut low, so as to leave them three feet high above the bank; and the parties so neglecting shall repay to the surveyors their reasonable expences, and on neglect of payment for

Surveyors neglecting their duty, forfeit 5*l.*

for fourteen days after demanded, the justices at their next public meeting, are to issue out a precept to the constables, &c. to let the same by distress: But this act is not to extend to timber trees growing in the hedges.

91. In a trial concerning repairs of highways, those who are chargeable to the repairs shall not be admitted as evidence; but a person in the parish no way liable to such reparations, is allowed to be a good witness. *Term. Hill. 14 & 15 Car. 2.*

Persons keeping coaches obliged to send a wain towards repairs of highways.

92. It has been adjudged, that he who keeps a draught and but two horses, is obliged to give his attendance with it for repairing of the highways; and a person keeping a coach and pair of horses, not a team, is bound to send out a wain towards the repair of the highways, a coach and horses doing as much damage to the ways as a cart and horses. *Dalt. 105. 1 Le. Rep. 139.* And it hath been resolved, that it is the occupier and not the owner of the land who is generally to be assessed for and chargeable with the repairs of the highways. But where there is no occupier, and the owner suffers the lands to lie fresh, in such case, he shall be charged as if he had occupied them. *2 Roll. Rep. 412.*

Unity of possession doth not extinguish a way thro' land, &c.

93. There were three parcels of land, and the necessary private way was out of the first parcel to the second, and out of the first and second parcels to the third parcel, and J. S. purchased all the three parcels, and afterwards aliens the two first parcels to J. W. and whether this unity of possession in J. S. did not extinguish the way, came in question; and it was said, that if it were a way of necessity, and no other way to the third parcel which J. S. still kept, that then the way doth still remain; for it is not only a private inconvenience to J. S. but also a prejudice to the commonwealth, for land to lie fresh and unoccupied; and so it was adjudged by the court. *Parker and Welstead's case, 2 Sid. 39 M. and 112. 3 D. A. 320. p. 17. Clark and Cogg's case, Cro. Jac. 170.*

94. If T. have an antient way over the close of H. and H. sows the close and way, and leaves a way in another part of the close; yet T. may justify to go where the antient way is, and is not bound to go in the unplough'd way. *Horn and Taylor's case, Noy's Rep. 128. 1 Brownl. 212. Yel. 141. 1 D. A. 782. p. 3.*

95. Though it is provided by the statute of *Marlb. c. 15.* that no distress shall be taken in the highway, unless by the king's officers having special authority; yet this is intended only of distresses for rents and services, and not for those things whereof no distress can be but in the highway, as for toll, &c. And in case a distress be taken for rents and services in the highway, yet the party distrained cannot plead it in bar, but must bring his action upon the statute. *Smith and Shepherd's case, Cro. El. 710. Moor 574. 2 Ro. Ab. 522. p. 3. B. p. 1. 8 Co. 60. 2 Inst. 131.*

96. If

96. If the lord comes to distrain, and sees the cattle upon his tenancy, and the tenant, or any other, on purpose to prevent the distress, drives the cattle out of the ground into other lands not holden of the lord, or into the highway; in this case he may freshly follow and distrain them there, and is not punishable by this statute; but in both these cases the lord when he comes to distrain, must have the view of the cattle within his fee; but see stat. 11 G. 2.

Lord may distrain cattle in highway, if driven out of his sight, &c.

97. Stewards in court-leets have power to inquire after the offences aforesaid, committed within the precincts of their leets, and set reasonable fines and amercements upon offenders, &c.

98. Every person or persons occupying a plough land in tillage or pasture, which lies in several parishes, is chargeable only in the parish where he lives, in the same manner as any person having a plough land all in one parish; and he which keeps in his hands or possession several or divers plough lands in several or divers towns, shall be chargeable to find in each town or parish (where the plough lands being in his occupation do lie) one cart, wain, slead, cart or dragg, furnished for the amendment and repair of the highways, within the several parishes where the said plough lands do lie, as if he or they were a parishioner dwelling there.

How persons having ploughlands in several parishes are chargeable, &c.

99. In *Michaelmas* term 27 *Car.* 2. an order was made by the justices of peace in *Middlesex*, for charging several brewers and bricklayers living there, and using several draughts, to send so many as they kept, for the repairing of the highways; and the order being removed into the King's Bench, a *procedendo* was awarded by the lord chief justice *Hale*; and the whole court were all strongly of opinion, that so many draughts as they kept, so many they ought to send, that so the service they will do, will answer the wrong and damage by them occasioned in the highways.

As many draughts as a man keeps, so many he ought to send out, &c.

100. He that keeps a cart for hire, and goes with one or two horses, must send his cart to the amendment of the highways, with so many horses as he goes withal for hire, to carry such loads as they are able to draw.

101. The lord of the manor who hath the land on both sides of the highway, shall have the trees growing in the said way; and so where the highway is over the lord's waste; for the king hath but the free passage for him and his people; but the freehold and all the profits are to the lord of the soil, as trees, grass, &c. and he may have an action for the trees taken away, or eating the grass, or digging the soil, &c. And though it be customary for salters and colliers to bait their horses, and eat the grass growing in the highway, yet they are trespassers in so doing. But he who hath the land adjoining but to one side of the highway, shall not have the trees growing even upon that moiety of the highway.

The soil of highways belongs to the lord of the manor, &c.

Justices at quarter-sessions to assess the prices of land-carriage, &c.

102. By stat. 3 & 4 W. & M. c. 12. 'tis enacted, that the justices of peace within the realm of *England*, or dominion of *Wales*, at their respective quarter or general sessions after *Easter* yearly, are to assess and rate the prices of all land-carriage whatsoever, of goods to be brought into any place within their respective limits and jurisdictions by any common waggoner or carrier, and to certify the said rates to the several mayors, and other chief officers of each respective market town, within the said limits and jurisdiction, to be hung up in some publick place in every such market-town; and no common waggoner or carrier is to take above such prices so set, on pain to forfeit for every offence 5 *l.* to be levied by distress, by warrant of any two justices of peace where such waggoner or carrier shall reside.

103. If any common or private way that leads from a village, &c. to the parish church or fields without any communication with a great road, be ruinous and out of repair, every inhabitant has a right to bring an action. 1 *Vent.* 208.

104. Actions for any thing done by means of the act 22 Car. 2. c. 12. or 3 & 4 W. & M. c. 12. are to be laid in the proper county, and the defendant may plead the general issue; and there be a verdict for the defendant, or the plaintiff become nonsuited, &c. the defendant shall have treble costs.

'Tis not the inquisition and return on a *quod damnum*, but the licence of the crown grounded thereupon, which gives a right to inclosure, &c.

105. Without licence to inclose an old way, though on an *Ad quod damnum* the inquisition find that such inclosure would injure none, and it is so returned; yet none can lawfully inclose, for he did he would be guilty of a nuisance; for it is not the inquisition and return that gives any right to inclose, but the licence of the crown grounded thereupon; and after the inquisition it is in the election of the king or queen, to let the old way stand or not. The person grieved by the inclosure is to bring his appeal the next sessions after inquisition found. And no inclosure can be made by virtue of the inquisition, according to the *Ad quod damnum*, without licence, unless by virtue of an act of parliament. *Case of the Queen ver. Ogden.* An order was confirmed at the quarter-sessions for the county of *Dorset*, made by two justices of the peace of the said county, founded on the clause 8 & 9 W. 3. cap. 16. for enlarging the highways. There was an *Ad quod damnum* sued out, and an *Ad nullius damnum* returned, and an order thereupon made for inclosing such an antient highway and setting out ground for another in such a place, and an appeal from this order to the sessions, where the inclosure was declared a nuisance to the whole country. *Modern Cases*, 4, 46, &c.

106. By stat. 3 & 4 W. & M. c. 12. none shall be punished for any offence against that act, unless he be prosecuted within six months after the offence committed.

107. It hath been resolved, that an indictment against a man for stopping of an highway in his own lands is good, without laying the offence done *vi & armis*. *Poph.* 296.

108. Who

108. Whoever is indicted, or presented, at any court except court leet, for any offence relating to the highways, (unless it be by presentment of a justice of peace) may traverse the whole matter alledged against him in such indictment or presentment; but he who is presented for such offence in a court leet, can only traverse it so far as it concerns his freehold, as by charging him with being bound to such repairs, in respect of the tenure of his lands, &c. for which purpose he may remove it by *certiorari* into the King's Bench, and there traverse the same. *Dyer* 14.

They who are presented in a court-leet, may traverse it only so far as it concerns his freehold, &c.

109. There are many acts of parliament concerning highways and bridges in particular places, in most of which there is a clause which *impowers two justices at petty or special sessions, to determine how much of the statute work of each parish shall be done in the road mentioned in the act*: And another clause which enables the trustees, or a *quorum* of them, to compound with any of the parishes to which the said roads belong, or with possessors of such lands as are chargeable, for a sum of money, or otherwise, by the year, in lieu of the statute or other work. But these laws being adapted to special purposes, and confined to particular places only, and being besides encreased to a greater number than can be taken into the compass of this work, we must refer the reader to the statutes themselves, for further information concerning them.

110. As to indictments about highways, they are either,

1. For obstructing or stopping a way, or
2. For not repairing.
3. For nuisance, or,
4. For not working on them.

111. *First, for obstructing or stopping a way.* An indictment for stopping the king's highway in *Kensington*, good, without saying from such a place to such a place; otherwise of a common way. *Noy* 90. *2 Saund.* 157. An indictment for stopping a way to a church, without saying *communis via*, good. *Poph.* 206. *2 Saund.* 157. *Latch* 115. An indictment against a lord of a manor stopping of an highway in his own lands, is good, without laying the offence done *vi & armis*. *Poph.* 206. For stopping *quandam partem aquæ* it was quashed; for it should have been *terram aqua co-opertam*. A man was indicted for stopping *communem viam pedestrem ad ecclesiam de L.* and it was held that if the way had been alledged to be *pro parochianis*, it had made the indictment ill; for then the nuisance would extend no farther than the parish, and every parishioner might have an action; but it was laid *ad commune nocumentum*; and in such case, the church shall be only intended the *Terminus ad quem*. *2 Co.* 524. *1 Vent.* 233.

A man was indicted for stopping communem viam ad commune nocumentum, and held good, &c.

112. Where the defendant pleaded, that he had laid out a more commodious way, and that before it was done he brought a writ of *Ad quod damnum*, viz. &c. Whether it should be a damage

mage if the king should give a licence to stop up the way? And upon the inquisition taken, it was found that 'twas no damage. This was held no good plea, because he did not plead that he had obtained the king's licence, neither did he set forth by what authority he laid out the way; for it is but at his pleasure, and he might stop it when he would. *Cro.* 296.

When a presentment for diverting a way is void.

113. An indictment for stopping *quandam partem via regie apud G.* is not good, without alledging how much in breadth and length, *Roll. Abr.* 9 Part 81. but you must not say *per assumptionem*; for that is uncertain. The word (divert) not being term proper and applicable to a way, which may be obstructed but cannot be diverted; therefore a presentment in a leet for diverting a way is void.

Ploughing up held to be stopping a way.

114. An indictment for stopping a way *valde necessariam* for the subjects, quashed; because it did not alledge it to be *regiam viam*. 4 *Leon.* 121. The like for alledging it to be *ad necessarium diversorum*, &c. it should be of all the people. *Cro. E.*

148. 1 *Vent.* 4. The information was for stopping, and the evidence was that he ploughed it; and it was held good.

When on Not Guilty, the decay only comes in question.

115. Secondly, For not repairing the highways. Upon Not Guilty pleaded, the decay only comes in question; for if another person ought to repair, he shall be acquitted, though no judgment can be given upon such a verdict. *Sid.* 140. A prescription to repair *ratione tenuræ*, is not good; because it ought to be by custom, which is local, *viz.* that in such a place there has been a custom time out of mind, &c. to repair. *Sid.* 464. *Style* 400. Where a man is indicted for not repairing *ratione tenuræ*, omitting the word *sua*, 'tis well enough; for the forms are both ways, and in the latter indictments the word *sua* is often left out. *Latch* 205. 1 *Vent.* 331. Though the king should have granted before 2 & 3 *Ph.* & *Mar. cap.* 8. that lands shall be exempted from repairing, &c. yet that is not a good discharge for the lands. 3 *Mod.* 96.

What is a highway.

116. A highway is that which leads from one market-town to another, and is to be repaired of common right, by the parish where the decay is, unless some other person is bound by prescription or custom; and therefore *reparare debet*, generally, without shewing how, is not good. But if the defendant pleads *reparare non debet*, and 'tis so found, he shall be acquitted, though it doth not appear who should repair; and the reason may be, because *de communi jure* the parish is bound to repair their own highways, and therefore they are never allowed to plead Not Guilty, and give in evidence that another ought to repair by prescription or tenure; for if they would discharge themselves they must plead it. *Sid.* 140. 1 *Vent.* 256.

What a common way.

117. A common way is that which leads from a village or town to the parish church or fields; 'tis also called a private way, and is to be repaired by the village or hamlet, and sometimes

by a private person; if such a way be out of repair, every inhabitant may have an action, but an indictment will not lie.

Vint. 208. But a hamlet within a parish cannot be charged generally to repair without prescription, &c. *Style* 163.

118. If the inhabitants of a parish are indicted for not repairing a way, and they submit to a fine, and pay it; this is not enough, for writs of *distringas* shall be awarded *in infinitum*, till repaired. If the defendant, before verdict, brings a certificate that the way is repaired, then he may submit to a fine; but after a verdict, such a certificate will not do; because the conviction being upon record, must be answered by matter of fact of a nature, and that must be a *constat* to the sheriff, who may return that 'tis amended. *Raym.* 215. Many indictments were exhibited severally against several men; because each by himself suffered his door to be unrepaired; and it was shewed the indictments that every one ought to repair; and thereupon was moved, that they might be quashed; but the court would not quash them without certificate, that the parties had repaired the doors. *Trin.* 15 *Car.* 1. *March's Rep.* 43. *Pl.* 71. See *Style* 364. p. 159.

119. Of common right, all the country ought to repair the highway (except where some are particularly bound to repair it) because the country have their ease and passage by it. *Co. Rep.* 3. p. 33. *Pasch.* 7 *Jac.* 1.

120. An indictment against the inhabitants of *Shoreditch* and *Blackney* in *Middlesex* for not repairing the highways, was quashed; because the parishes were jointly indicted, which ought to have been several. *Style's Reports* 157. An indictment against the inhabitants of *Mile-end* within the parish of *Stepney*, alias *Stepney*, for not repairing the highway, was quashed; because *Mile-end* is but a hamlet within a parish, which cannot be charged to repair a highway, except it be by prescription, or for some other special reason; but the whole parish or village is to be charged. *Style's Rep.* 163. An indictment for not repairing a highway was quashed; because it did not set forth from what place to what place it did lead, *Style's Reports* 156. though it hath been held otherwise in *Halset's case*, *Mich.* 1. *Noy's Reports*, p. 90. An indictment against Sir *Richard Lucy* for not repairing a highway, was quashed; because it was not shewed of what place he was an inhabitant. *Noy's Reports* 87. *Benloe's Reports* 198.

121. Where one was presented at sessions for not repairing a highway, which he ought to repair in respect of his holding certain lands, parcel of the way unrepaired; and also which lands he had inclosed and incroached; on removal into *B. R.* the court were of opinion that he ought to have been charged, either by reason of his holding the land singly, or by his incroaching singly; and *Kelynge*, C. J. said, that though by incroaching upon the

Two parishes not to be indicted jointly.

An indictment must set forth from what place to what place.

the

Where one is obliged to repair the whole way, and where but half of it.

the highway he became liable to repair it as long as the incroachment continued; but so soon as he lays the land open again to the way, he shall be discharged from the repair of it; but where a man is obliged to repair a highway in respect of his holding any lands, although he leave those lands open to the way, yet he is obliged to repair the way. *Trin. 22 Car. 2. B. R. 2 Saunders 160. 2 Keb. 552, 665, 727. 1 D. A. 786. p. 1. Sir Nicholas Stoughton's case.* The same is in *1 Sid. 464.* where C. J. said none denying it, that if one inclose land of one side the highway, which was antiently inclosed of the other side, he who makes the new inclosure shall repair all the way; but if there had been an antient inclosure of the other side, he should have repaired but half the way; but if one make a new inclosure both sides the way, there he shall repair all the way, agreeable to Sir Edward Duncomb's case. *Trin. 10 Car. 1. Cro. Car. 30. 1 D. A. 783. p. 1.* C. J. Hale said in *Austin's case, Hil. 23. 24 Car. 2.* that if there be no special matter to fix the repair of the highways upon others, the parish where the highway is, ought to repair it of common right. *Vent. Reports 183 & 289.*

122. See the form of a conviction for highways upon the view of a justice of peace, *Kelyng's Reports 33, 34.* An indictment against S. for not repairing the highway, the way laid out to be the King's highway, or the common street, quashed; because it was not laid for all the King's liege people. *B. R. Hil. 9 W. 3. The King v. Saunders. Co. Lit. 56. Cro. El. 63.*

Indictment must conclude ad commune nocumentum.

123. 3dly, For a nuisance in the highway. An indictment against a nuisance in a horseway, was quashed; because it ought to have been the Queen's highway, or the highway. *Mich. 21 El. B. R. Cro. Eliz. 63. Co. Litt. 56. a.* The indictment must conclude *ad commune nocumentum ligeorum, &c.* if 'tis restrained by words *prope inhabitantium*, it will be quashed. *1 Roll. Rep. 40. 1 Vent. 26.* Upon an indictment for a nuisance, the court never admits the person to a small fine, 'till 'tis removed, and affidavit made thereof, or else certified by two justices; neither ought the defendant to take any exceptions to the indictment, 'till he has pleaded to it.

What is a nuisance in a highway.

124. 'Tis a nuisance to erect a gate across a highway; though the gate is easy to be opened, any man may break it or cut it. *James v. Hayward, Cro. Car. 184. 1 Jones 221. 2 Ro. 137. C. p. 1. 144. T. p. 1.* So 'tis to erect a dam on his own land, and part of it on another man's land; and therefore any other person may pull his part down, though the owner's part shall fall. In indictments for nuisances, the place in which the nuisance complained of was done, is to be expressed. On an indictment, the defendant must produce a certificate that the nuisance is removed, before he can take exceptions to it; but a judgment in such a case, may be quashed without a certificate &c. An indictment for putting a laystall next a highway,

good, without shewing from and to what place the way leadeth.
Roll. Abr. 81.

125. 4thly, *For not working on the highways.* In Easter term Car. 2. in an indictment, notice was alledged *die dominica festum*, &c. and did not say *proxima*, which ought to be, by statute 2 & 3 Pb. & Ma. c. 8. for which reason it was quashed. If a man hath eight plough-lands, though 'tis all tithable, he ought to find eight teams by six days. Raym. 286. The indictment was, that the defendant *habens tantam terram* did not work; and it was objected, that the defendant might have lands, and not use them himself; and this was held to be material; for in this case, the statute charges the occupier.

Statute charges the occupier with working on highways.

126. There are several statutes for erecting turnpikes, where authority is given to justices of peace and trustees, to appoint special surveyors of the highways, to amend the same, and collectors of toll, so much for every horse, &c. and so much for every coach, &c. accounting to the justices, &c. And all persons chargeable towards the repairs of the highways shall remain notwithstanding. In most of the acts for setting up these turnpikes, there is a clause, that if any person shall drive any horse, sheep, or other cattle, through any grounds adjoining to the highway, whereby the toll shall be avoided, being thereof convicted on oath before one or more justices of the peace for the county, he shall forfeit 10 s. leviable by distress.

Turnpikes.

127. By stat. 5 Geo. 2. c. 33. 'tis enacted, that if any person or persons whatsoever, shall, either by day or night, wilfully and maliciously break down, cut down, pluck up, throw down, level, or otherwise destroy any turnpike gate, or any post, rail, wall, or other fence, belonging to any such turnpike gate erected, or to be erected, to prevent passengers from passing by without paying the toll, directed to be paid by any act of parliament already made, or hereafter to be made for that purpose; and shall be lawfully convicted of the same, upon indictment before any of his Majesty's justices of assize, oyer and terminer, and general gaol-delivery for the county, city, town, borough or corporation where such offence shall be committed; every person so offending, and thereof lawfully convicted, shall be adjudged guilty of felony; and the courts, before whom such felon shall be tried, shall have power and authority to transport such felons for seven years, as other felons are directed to be transported. And if they return before the expiration of the said seven years, so returning shall suffer death as felons without benefit of clergy.

Penalty of breaking down turnpikes, &c. by 5 Geo. 2.

128. But by 8 Geo. 2. c. 20. the abovementioned offences in destroying turnpikes, &c. as also destroying any house erected for the use of any turnpike gate, or forceably rescuing any person in custody for any of the said offences, are now made felony without the benefit of clergy; but no attainder for any

such

such offences shall work corruption of blood, loss of dower, forfeiture of lands or goods.

129. By the said act 5 *Geo. 2.* the commissioners for putting in execution any act of parliament for repairing highways, making rivers navigable, may, out of the tolls, pay the costs any action or prosecution, commenced on account of destroying any turnpike, &c. or any turnpike house, or any lock, sluice or other work on any navigable river, erected by authority of any act of parliament. And if the commissioners and trustees appointed to put any act of parliament for the repair of any highway in execution, shall cause to be erected or continued any gate or turnpike, where they have not power by any act of parliament to erect such gate or turnpike, it shall be lawful for the justices of the peace for the county, where any such gate or turnpike are, or shall be erected or continued, in their general quarter-sessions assembled, upon complaint of any such abuse or excess of power in such commissioners or trustees, in a summary way to hear and determine the same; and thereupon to order the sheriff of the county, (who is thereby authorized and required to execute such order) to remove any such gate or gate turnpike or turnpikes. This act is made perpetual by 27 *G. 2. c. 16.*

130. By the abovementioned stat. 8 *Geo. 2. c. 20.* it is further enacted, that persons who shall wilfully and maliciously draw up any flood-gates, erected by act of parliament, on any navigable river, on conviction on oath of one witness before two justices, shall be sent to the house of correction, and kept to hard labour for one month. And the inhabitants of the hundred in which any of the foregoing offences in pulling down turnpikes, &c. shall be committed, are made liable to an action for satisfaction of the damages, (not exceeding 20 *l.*) which damages shall be applied as the tolls are: And the hundred shall be taxed for the relief of such particular inhabitants against whom execution shall be had in such manner as prescribed 27 *Eliz. c. 13.* But if any of the offenders be convicted within twelve months after the offence, the hundred shall not be liable to such action; and if they have paid the damages, the same shall be repaid to them out of the tolls: And no such action for damages shall be prosecuted, unless information on oath be made within six days before a justice of the peace inhabiting within or near the hundred, nor unless the action be commenced within six months after the offence committed.

131. Persons assaulting or threatening any collector of the toll, or who shall forceably pass through without paying toll, or shall forceably carry away such collector, or detain him so as not to be able to return to his duty for three days, being thereof convicted on oath of one witness, after being summoned before two justices, shall forfeit 5 *l.* to be levied by distress, by warrant

warrant of the said justices; and for want of distress, to be committed by them to the county gaol for six months, unless sooner discharged by the quarter sessions: And for the second or third offence, the offenders shall forfeit 10*l.* in like manner; and for want of distress, shall be committed to gaol for one year, and give security at the quarter-sessions for their good behaviour for seven years. And the collector of the toll may seize and detain any person guilty of the aforesaid offences, and carry him before a justice without warrant, who is authorised to oblige such person to give security for his appearance at the next petty sessions for the division, or commit him till he gives security. But persons agrieved by the order of two justices, may appeal to the quarter-sessions; and if the court are of opinion a reasonable time of notice was not given, they may adjourn the appeal to the next quarter-sessions; and may award costs to either party. *Ibid.*

132. A constable refusing to execute any warrant under the hands and seals of the commissioners of any turnpike, to levy money for any default, or any warrant under the hands of two justices, for apprehending any offender against this act; or any other person refusing to assist such constable in apprehending such offenders, shall forfeit 5*l.* to the clerk to the commissioners of the turnpike, &c. to be levied by distress, by warrant of two justices to be directed to the high constable. *Ibid.*

133. All forfeitures by this act 8 *Geo.* 2. shall be paid to such person as any five of the commissioners shall direct: And the constable or clerk refusing to account, or pay over the same, on oath of one witness, be committed by two justices to the common gaol, till he shall pay the same; and the determination of the justices of the matters aforesaid, at the quarter-sessions, shall be final. This act was at first made for five years, but has since been continued by several acts, and is now made perpetual by 27 *Geo.* 2. c. 16.

134. By 24 *Geo.* 2. c. 43. all penalties and forfeitures imposed by this or any other act relating to the repairing or mending public roads, and for punishing offences on the highways, are wholly given to, and vested in, the informer or persons who shall sue for the same, any law or statute to the contrary notwithstanding.

135. By 26 *Geo.* 2. c. 30. the fellyes of the wheels of waggon, and other four-wheel carriages, (except as aftermentioned) rolling on any turnpike road, are to be nine inches broad, under the penalty of 5*l.* or forfeiture of one of the horses, (being the thill horse) with the accoutrements, &c. to the use of the person who shall seize or distrain the same; and the person seizing or distraining such horse, &c. shall deliver the same to a constable or other parish officer, who is to take custody thereof, till the person seizing shall on oath make proof

of the offence before some justice or justices of the peace; and the justice or justices are thereupon to issue their precept for delivery of the distress to the person who seized the same, paying reasonable charges for keeping and securing thereof; and if no proof be made in three days, the distress shall be returned to the owner. But this act is not to extend to coaches, chaises, &c. nor to any waggon drawn by less than five horses or beasts of draught; or to any wain, cart, or other wheel carriage drawn by less than four horses or beasts of draught; or to any waggon or other wheel carriage, drawn by oxen or cattle only. *N. B.* The breadth of the fellyes of the wheels abovementioned is, by 18 G. 2. c. 17. §. 5. declared to be that the sole or bottom of such fellyes shall be of the breadth or gauge of nine inches from side to side at least, and shall be flat and even from side to side, or as near as may be.

136. Carriages having the fellyes of their wheels nine inches broad, laden with one tree or piece of timber, or with one block of stone or marble only, may be drawn on any turnpike road with any number of horses or beasts of draught; and one or four wheel carriages, having wheels of the like breadth, with any number not exceeding eight, and two wheel carriages, with any number not exceeding five, without being subject to any toll, or to the additional toll of 20 s. made payable by 24 Geo. 2. c. 12. or any other law, for carriages drawn by horses, or without being liable to forfeit any of the horses, notwithstanding the act 6 Geo. 1. c. 6. *Ibid.*

137. And waggons, and other four wheel carriages, with said broad wheels, may travel on any highway in Great Britain with any number of horses, or beasts of draught not exceeding eight, and carts or other two wheel carriages, with any number not exceeding five, without being subject to any penalties or forfeitures, for travelling with a greater number than are allowed by law. *Ibid.*

138. This act also directs the trustees for turnpike roads to reduce extraordinary tolls, on particular highways and roads with respect to broad wheel carriages only; and that any one or more of them shall meet from time to time, and order the surveyors to level the ruts, and to cause the roads to be widened where necessary.

139. And by the same act, the surveyors of the highways of places wherein any highway or road intervening between two different turnpike roads lies, shall be directed to level the ruts to be levelled in such intervening road; and if any persons shall refuse to do their statute work thereon as the surveyors shall direct, or to pay their proportions of the charge thereof, two justices are empowered, on complaint thereof on oath, to authorise the surveyors to levy such proportions of the charge

to enforce the payment thereof, by such means as the rates repairing highways are by law to be raised.

140. The trustees appointed by parliament for repairing highways, are to order the fellies of the wheels of waggons, &c. to be measured at any turnpike gate; and where the same shall appear to have been originally nine inches broad, and to be by use reduced to not less than eight inches, the owners of such carriages shall be exempt from all penalties by the said act. And the persons obstructing the measuring of such wheels, or the seizing any horse, &c. forfeited by the said act, shall forfeit 10*l*. And the drivers of waggons, &c. on any turnpike roads, not having wheels according to the direction of the said act, or drawn with more horses than the number thereby appointed, may be apprehended by the constables, tythingman, surveyors of the highways, or any other inhabitant of the parish or place where the offence shall be committed, or by the surveyors of the turnpike road, or persons appointed by the trustees, and carried before one justice; and on conviction before him by confession, or on the oath of one witness, the offender shall forfeit 5*l*. and for want of distress for the same, to be committed to the house of correction for one month, or till the forfeiture be paid. *Ibid*.

141. And the owners of waggons, &c. travelling for hire on any turnpike road, not having their christian and surnames, and places of abode legibly written or painted on the tilt, or some conspicuous part of their carriages, shall be subject to the like penalties and forfeitures, as persons driving carriages with wheels under the breadth allowed by the said act; and persons using a false or fictitious name on their carriages, on turnpike roads, forfeit 5*l*. for every offence.

142. All the penalties and forfeitures to be levied by virtue of the said act 26 Geo. 2. c. 30. are to be applied, one moiety to the person who shall sue for the same, the other to the trustees for repairing the road.

143. By stat. 28 Geo. 2. c. 17. the owners of waggons and other carriages, out of which any goods shall be unloaded, at or before they come to any turnpike gate, with intent to avoid paying any part of the toll to be there collected, shall, on conviction before three or more trustees, or one or more justices of the peace, on the oath of one witness, forfeit 5*l*. to be levied by distress and sale of the offender's goods, by warrant from such trustees, justice or justices; and the drivers of such carriages, convicted as aforesaid, shall be sent to the house of correction for any time not exceeding one month. And collectors of the tolls permitting any narrow wheeled carriages to pass, without weighing, shall, on conviction in manner aforesaid, be sent to the house of correction, to be there kept to hard labour for one month.

month. But by 30 Geo. 2. c. 28. collectors shall be obliged to weigh loaded carriages only.

144. Waggon or other four wheel carriages, not being common stage carriages, (though the fellyes of their wheels be not nine inches broad) may travel on any turnpike road, if not drawn by more than five horses or beasts of draught; but if drawn with more than five, the owner shall forfeit 5 l. and the driver shall be committed to the house of correction for one month, without bail or mainprize. And any waggon or other four wheel carriage may be drawn on any turnpike road, if not drawn by more than six oxen in pairs and two horses, or eight oxen in pairs with two horses; and carts and other two wheel carriages, if not drawn by more than six oxen in pairs and one horse, or four oxen in pairs with two horses; although the fellyes of the wheels of such carriages be not nine inches broad. *Ibid.* N. B. The words *Common Stage Waggon* in this act, as by 30 Geo. 2. c. 28. §. 13. declared to mean any waggon, wain, cart, or carriage, travelling with or carrying goods for hire.

145. By stat. 30 Geo. 2. c. 28. trustees for turnpikes for seven years, from 24th June 1758, may take for every waggon and carriage with narrow wheels, before they shall be permitted to pass any turnpike gate, one half more toll than is or shall be payable for the same by any turnpike act made or to be made, except for carts or carriages drawn by one horse or two oxen and no more; and except for carts or carriages having the fellyes of the wheels thereof of the breadth or gauge of six inches at the bottom from side to side, and drawn by two horses or four oxen, and no more. And during the time aforesaid, such carriages shall be exempted from paying tolls, or shall be suffered to pay lesser tolls than other carriages are charged with in particular cases, by virtue of any act of parliament in which there are such exemptions, unless the fellyes of the wheels of such carriages be of the breadth or gauge of nine inches; except carts and carriages drawn by one horse or two oxen, and no more, and except carts and carriages drawn by two horses or four oxen, and no more, having the fellyes of the wheels thereof six inches broad; but the ordinary tolls, together with the additional tolls by the said statute enacted, shall be paid for all carriages, except those before mentioned. And all waggons and other carriages, having the fellyes of the wheels thereof of the breadth or gauge of nine inches, and drawn according to law, during the said seven years, shall be permitted to pass through any turnpike gate within one hundred miles from London, paying only half the toll required for such carriages by any turnpike act made or to be made; but such broad wheeled carriages are not to pass any turnpike gate, or on any turnpike road, unless drawn by horses or beasts of draught in pairs, except the

If there be an odd horse or beast of draught belonging to such carriage, that may pass; nor shall any narrow wheeled waggon or wain, pass along any turnpike road, or through any turnpike gate, if drawn by horses or beasts of draught in pairs, and not by oxen.

146. Persons driving any common stage waggon prohibited by this act, or any waggon, wain, cart or carriage, with any greater number of horses or beasts of draught than are by this act allowed, during the time aforesaid, along any turnpike road, or in any manner offending against the said act, and the owners of such carriages, shall be deemed guilty of a common nuisance and misdemeanor, and be punished for the same by indictment or information; or, at the election of the prosecutor or informer, shall be liable to the penalties and forfeitures that the owners of narrow wheeled waggons are subject to by 26 Geo. 2. c. 30. *Ibid.*

147. The trustees of turnpike roads shall not, during the said time, make any composition for tolls for any carriage, unless the fellies of the wheels thereof be of the breadth of nine inches. And no waggon, although the wheels thereof be nine inches broad, shall be suffered to pass along any turnpike road, if such waggon be wider than five feet six inches, from the middle of the fellies of the wheels on one side, to the middle of the fellies of the wheels on the other side; and the surveyors and gate-keepers are required to stop such waggon at the toll gate, or at any place on the road, and to measure the same; and if the master or driver shall hinder or refuse the measuring thereof, it shall not be permitted to pass.

148. By stat. 2 Geo. 3. c. 15. for the better supplying the cities of London and Westminster with fish, it is enacted, That every land carriage which shall be used for the conveyance of such fish, shall only carry fish, allowed to be bought as in the act mentioned, with the necessary implements belonging thereto; and shall be marked on the outside with the words, "*Fish Machine only*," and the owners, &c. are to enter their names to be registered with the commissioners for hackney coaches, and the number of the carriage is to be painted in large figures, or be put on lead or other metal, on some conspicuous part thereof, on forfeiture of 40 s. And no fish carriage shall be deemed a common stage waggon. Every fish carriage, numbered and marked as aforesaid, may travel on any turnpike road drawn by any number of horses in pairs not exceeding four; or by any single horse, or by any number at length not exceeding three, although the fellies of the wheels shall not be of the breadth of nine inches; and shall only pay toll as post-chaises, or other chaises drawn by the like number of horses. And every such carriage, whether loaded or returning empty, and the horses returned from drawing the same, may travel on Sundays and holidays, without incurring any penalty for so doing; and no toll

toll shall be paid for any such carriage returning without ass or for the horses drawing the same, or returning back from having drawn a loaded carriage.

A Warrant to levy the Forfeiture of a Constable, &c. for refusing or neglecting to return Lists.

3 & 4 W. & M.
c. 12. two justices, one witness upon oath.

149. Berks, ff.

W Hereas A. B. the constable or tithingman of the parish of, &c. in the county aforesaid hath refused or neglected to make and return a list of the names of a sufficient number of inhabitants of the said parish of, &c. qualified by law to serve the office of surveyor or surveyors of the highways in the said parish for the year ensuing; notwithstanding we sent our precept to him, requiring the same this day at, &c. being special sessions held for the electing of such surveyors, and for putting the laws in execution for repairing of highways, where he hath forfeited the sum of 20s. These are therefore in his Majesty's name to command you to levy the said sum of 20s. by distress and sale of the goods of the said A. B. rendering to him the overplus, if any such shall happen to be, the necessary charges of distraining being first deducted. Given, &c.

A Warrant to levy the Forfeiture for refusing to serve the Office of Surveyor, &c.

Moiety to informer, the other to amend the highways.
2 & 3 P. & M.
c. 8. two justices.

150. Berks, ff.

W Hereas C. D. of, &c. was at a special sessions held on the third day of this instant January, lawfully nominated and appointed to serve the office of surveyor of the highways, in and for the parish of, &c. for the year ensuing; and it having been duly proved before us, that the said C. D. had notice of the said nomination within six days after the same; and that he hath refused to take upon him the said office, whereby he hath forfeited the sum of 5l. one moiety thereof to be paid to E. D. of, &c. who hath informed us of the said offence, and the other moiety to be applied towards the repairing of the highways: These are therefore to command you to levy the said forfeiture of 5l. on the goods and chattels of the said C. D. by distress and sale thereof, to be paid and employed as aforesaid, and that you do forthwith return to us or some other justice, &c. the names of other persons within your parish fit to serve the said office of surveyor, that the business of the highways may not be neglected. Given, &c.

Warrant to levy the Forfeiture on a Surveyor for not erecting a Post at Crossways for Direction of Travellers.

51. **W** Hereas the post sometime since erected and set up in the 8 & 9 W. 3. highway leading to, &c. at the meeting of several c. 16. crossways therein, is decayed and consumed so as to be rendered use-
less, and E. D. &c. surveyor of the highways in the said parish of, being ordered by us to erect, fix, and set up a new post at the meeting of the crossways aforesaid, with an inscription thereon in large letters, setting forth the name of the next market-town, to which each of the said crossways leads, according to the act of parliament in that case made, hath neglected to do the same, whereby he hath forfeited the sum of 10s. to be employed towards the erecting and setting up such post: These are therefore to require you to pay the said sum of, &c.

A Warrant against a Surveyor refusing to account.

52. Berks, ff. **W** Hereas it hath been duly proved before us Two justices, J. S. and P. M. esqrs. two of his Ma- one witness, Jy's justices of peace for the county aforesaid, That J. O. of, &c. upon oath. surveyor of the highways in and for the said parish, hath neglected to give an account upon oath at any special sessions of all money which hath come to his hands, and which ought to be employed in amending the highways, and how he hath disposed thereof, so that for such his neglect he hath forfeited the sum of 40s. one moiety to the informer, and the other to repair the highways in the said parish: These are therefore, &c.

A Warrant against a Surveyor refusing to deliver what remains in his Hands to the succeeding Surveyors.

53. Berks, ff. **W** Hereas R. G. of, &c. this day made oath Two justices, before us J. S. and P. M. esqrs. two of one witness. his Majesty's justices of the peace, &c. That M. N. now or late surveyor of the highways in and for the parish of H. &c. hath refused to deliver to the next surveyor of the highways in the said parish, what monies remained in the hands of the said M. N. which ought to be employed in amending the said ways; which said money doth amount unto 40s. by reason whereof he hath forfeited double the value; one moiety to the informer, the other to amend the highways in the said parish: These are therefore, &c.

An

An Information against a Person drawing a Waggon with more Horses than allowed by Law.

154. **T**HE information of C. D. of, &c. taken before A. esq; one of his Majesty's justices of the peace for county of, &c. this day, &c. the said C. D. saith on his oath, in and upon, &c. last past, he the said C. D. saw a waggon long to, &c. of, &c. in the said county, carrier, travel through the parish of, &c. in the plain road some distance from any b &c. drawn by seven horses at length.

Sworn before me the day
and year aforesaid.

N. B. Drawing of travelling carriages with more horses than are allowed by law, is a nuisance by statute, as it prejudices the highways.

The Precept of the Justice to deliver the Horse seized on drawing with above six Horses, to the Seizor.

155. Berks, ff. **W**HEREAS on the day of the date hereof, was duly proved before me upon the oath of C. D. of the parish of, &c. That a waggon travelling in the road for hire, on the, &c. of July, &c. last past, in the parish of, &c. aforesaid, and not employed in husbandry, but loaded with goods not excepted by any law whatsoever, was drawn with more than six horses, contrary to the statute in that case made and provided, by reason whereof one horse being above six in the said waggon, drawing it in manner as aforesaid, with all geers, bridle, halters and accoutrements, were then and there seized by the said C. D. as forfeited, and were delivered by him to the constable of, &c. aforesaid, that being the next parish where such seizure was made: Now I do hereby command you the said constable of, &c. forthwith to deliver the said horse and other the forfeited things unto the said C. D. who first seized the same, to and for his sole use and benefit, he paying unto you the said constable 2s. for keeping and securing the same for two days. Given under my hand, &c.

Order of Sessions for a Rate to repair Highways, &c.

The city, borough and town
of Westminster in the county
of Middlesex, to wit.

At the general quarter-sessions of the peace.

UPON reading the humble petition of the church-wardens and surveyors of the highways of the parish in this liberty, exhibited to this court, thereby shewing that the common highways, causeways and pavements in the said parish are very much out of repair, and will require the sum of _____ and upwards, to repair and amend the same; which cannot be raised without the aid of this court; it was therefore prayed by petitioners, that a rate may be made upon the inhabitants of the said parish, not exceeding three-pence in the pound for repairing the said highways, causeways and pavements, according to the direction of the statutes in that case made and provided; to be collected by the present surveyors of the highways in the said parish, and that the money to be collected on the said rate, may be employed and laid out, as the justices of peace for this city and liberty, usually acting at their special sessions in the said parish, shall direct and appoint. Now for as much as it appeareth to this court, that the common highways, causeways, and pavements in the said parish, are very much out of repair, and that it is necessary and requisite, that a rate or assessment, not exceeding three pence in the pound, hereafter mentioned, should be made upon the inhabitants of the said parish for repairing the said highways, causeways, and pavements; and that without such rate the same cannot be otherwise sufficiently amended, repaired, paved, cleansed, and supported; it was therefore thought fit and ordered by this court, that the church-wardens, surveyors of the highways, and such other inhabitants of the said parish, as are usually present at making the parish rates, forthwith, upon publick notice given in the said parish-church on the Sunday before they meet, at their usual place of meeting within the said parish, make a rate or assessment upon all and every the inhabitants, owners, and occupiers of houses, lands, tenements and hereditaments, or any personal estate in the said parish, usually rateable to the poor, according to a pound rate, not exceeding three-pence in the pound, of the yearly value of the said houses, lands, tenements, and hereditaments, nor the rate of three-pence for every twenty pounds in personal estate, for repair of the said highways, causeways, and pavements within the said parish; and this court doth order, direct and appoint, that the said assessment so to be made, be allowed by any two or more of his majesty's justices of the peace for this city and liberty inhabiting in the said parish, and that

that the surveyors of the highways within the said parish, shall collectors of the said assessments when made and allowed of as aforesaid, and that the said assessment be levied by the surveyors the highways, or any two of them, according to the statutes that behalf, by distress and sale of the goods of every person assessed, and not paying the same within ten days after demanding the overplus of the value of the goods so distrained to the owner and owners thereof, the necessary charges of making and selling such distress being first deducted. And it is further ordered by this court, That the said surveyors of the highways of the said parish, do employ the monies so to be collected for repair of the highways, for and towards the amending, repairing, paving, cleansing, and supporting such highways, causeways, and pavements within the said parish; and it is further ordered and directed by this court, That if any person shall refuse or neglect to pay the rate for which he shall be rated by the space of ten days after demanding thereof, then, upon application to any two of his majesty's justices of the peace for this city and liberty, inhabiting within the said parish, such justices may grant their warrant for levying the same in the manner before mentioned. And it is also hereby further ordered, That the said surveyors of the highways shall well and truly account for the whole sum which shall be by them levied and collected upon the said assessments, to his majesty's justices of the peace which shall be assembled at the next general quarter-sessions of the peace to be held for the said liberty, after the election of new surveyors for the said parish for the year ensuing. Per Curiam.

A Warrant to distrain for a Highway Rate.

To the parish of _____ surveyors of the highways
or to any two of them, and to all others whom these matters
concern. _____ in the county of Middlesex

157. Middlesex, to wit. **W** Hereas in and by a rate, tax, assessment made, assessed and allowed, according to the direction of the statute, and in pursuance of an order of the general quarter-sessions of the peace held for the said county of Middlesex, an equal assessment of _____ in the pound, was in and by the said order directed to be made upon all and every the inhabitants, owners and occupiers of lands, houses, tenements, and hereditaments, according to their yearly value, and _____ for every ten pounds in personal estate, usually ratable to the poor within the said parish of _____ for repair of the common highways, causeways, and pavements within the said parish. And whereas _____ an inhabitant and occupier

of an house in the said parish of _____ in the
 county aforesaid, was rated and assessed pursuant to the said order
 of sessions, for and towards the necessary repair of the common high-
 ways, causeways, and pavements in the said parish for this present
 year, the sum of _____ and hath refused and ne-
 glected to pay the said sum of _____ assessed upon
 _____ as aforesaid, although the same hath
 been demanded of the said _____ by two of the
 surveyors of the highways of the said parish, in the manner directed
 by the said order of sessions. And whereas it appeareth unto us
 of his majesty's justices of the peace
 for the said county of Middlesex, inhabiting within the said pa-
 rish (whereof one is of the quorum) upon oath, that the said sum
 hath been demanded in person, and at the
 house of the said _____ more than ten
 days before the date hereof, and is still in arrear and unpaid, and
 that also the said _____ hath been summoned to
 appear before us, to shew cause why he did not pay the said rate,
 and hath not appeared nor shewn sufficient cause: These are
 therefore in his majesty's name to will and require the said survey-
 ors, or any two of you, forthwith to levy the said sum of _____
 so in arrear from the said _____ by
 distress and sale of _____ goods, rendering to
 the overplus (if any be) the necessary charges of making and selling
 such distress being first deducted; and for your so doing, this shall
 be your warrant. Given under our hands, &c.

A Warrant to levy the Forfeitures for Neglect of Statute Work in Highways, &c.

To _____ surveyors of the highways in the
 parish of _____ in the county of Middlesex, and to all
 others concerned.

158. Middlesex, to wit. **W** Hereas it hath been proved before
 us upon oath, that due and pub-
 lick notice hath been given and published in the parish church of the
 parish of _____ in the said county of Middlesex, for
 six days labour, or statute-work to be had, done and performed by
 all and every person within the said parish chargeable to the repairs
 of the roads, common highways, causeways, and pavements there-
 in, for and towards the repairing and amending the same as by
 law they ought. And whereas it has been proved upon the oath of
 a credible witness, before us, two of
 his majesty's justices of the peace for the said county, that
 an occupier of an house in the said parish of _____ labourer,
 or that A. B. an occupier of two plough-lands or having two
 carts

carts in the said parish of (as the case is) *be*
failed, neglected, and made default to do and perform his
days labour or statute-work in the roads and highways of the
parish, for and towards the repairing and amending the same
present year, pursuant to publick notice aforesaid, or hath failed
neglected, and made default to send his (teams) or carts to be
employed in doing and performing the six days labour or statute work
in the roads and highways of the said parish, for and towards
repairing and amending the same this present year, pursuant to
publick notice as aforesaid, (as the case is): And whereas he
said *has been summoned to appear before*
us, to shew cause why he should not pay the penalty or sum of
shillings, (viz.) one shilling and six-pence for each and every of
said respective six days by him forfeited, for his said several neglects
in not performing his statute-work as aforesaid, or (six pounds
viz. ten shillings for each of the said (teams, carts) for every
the said respective six days by him forfeited, for his said several
neglects in not sending his two (teams, carts) to do and perform
statute-work as aforesaid (as the case is) and has not appeared
before us, or made any reasonable excuse, although service of a
proper summons upon him for that purpose has been proved upon oath.
These are therefore in his majesty's name to require you the said
surveyors forthwith to levy the said penalty or sum of
by him forfeited as aforesaid, by distress
and sale of his goods, rendering to him the overplus, (if any
be) reasonable charges of distraining being first deducted: And that
you do apply the said sum, when levied, in such manner, and for
such purposes and uses as the statutes direct and appoint. And for
the due execution hereof you are to make a just and true return
when required. Given under our hands and seals this
day of 1749.

An Order of the Justices for a Surveyor to dig Gravel, &c. for repairing the Highways.

5 El. c. 13.

159. Berks, to wit. **W** Hereas complaint hath been made before us, two of his majesty's justices of the peace for the said county, by C. D. and J. K. surveyors of the highways of Newbury in the county aforesaid, That there is not sufficient gravel, sand, or stones, in the said parish of Newbury, for the repairing of the highways therein: We do therefore, in pursuance of the authority given us by the statute, hereby order and allow the said surveyors, or either of them, and such person or persons as they or either of them shall appoint, to dig, take and carry away gravel, sand, or stones, out of any waste or common in any parish or village in the neighbourhood of the said parish of Newbury, without paying any thing for the same, to be employed

employed in repairing and amending the highways aforesaid, so as they do fill up the place from whence such gravel, sand or stones, shall be so digged, (if required by the owner of the soil.) Given under our hands, &c.

Warrant to levy the Penalty on a Carter or Drayman, &c. riding on his Cart, &c.

County of Middlesex, to wit. **W** Hereas

drayman was this day lawfully presented before me one of his majesty's justices of the peace for the county, for riding on and driving the same street in the parish of (not

employing any person or persons on foot to drive, conduct, or take care of them, as by law he ought) and for which offence he the said hath forfeited the sum of

one moiety for the use of the poor of the said parish of the remainder to the use of the informer.

We are therefore to require you, and every of you, on sight hereof, to levy the said sum of by distress and

sale of the goods and chattels of him the said

returning to him the overplus (if any be) and if no such distress can be had or taken, that then you certify the same to me, to the

effect that I may further proceed therein as to law doth appertain. Given under my hand and seal this day of 1749.

Warrant to apprehend a Carman, or Drayman, &c. and commit them to Bridewell on Default of Distress.

the constables, and other peace officers, whom these may concern, and to the keeper of the house of correction for the county of Middlesex, or his deputy there.

County of Middlesex, to wit, **W** Hereas

of them standeth convicted before me

of his majesty's justices of the peace for the county of Middle-constable, for riding on

upon the oath of and driving the same in several and respective street in the parish of in the

county, not having any person or persons on foot to guide or direct the same, contrary to an act of parliament in that case

and provided; for which said offences the said and have respectively forfeited the sum of

each, to be levied, employed, and disposed of, as the

the said act directs. And whereas they the said
 and severally refused to pay the said sum
 each, and I thereupon granted my war-
 rant, dated the 19th day of last, to levy
 said sums by distress and sale of the several and respective goods
 and chattels of the said and render
 to them and to each of them the overplus (if any should be) accor-
 ding to the directions of the said act. And whereas
 one of the constables of the said parish
 to whom the said warrant was delivered
 to be executed, did on the day of
 make a return of the said warrant, and certified unto me, that
 upon enquiry or search it appeared unto him, that the said
 and had not, nor either of them
 had any goods or chattels, whereof a sufficient distress could be
 or taken to levy the said forfeitures. These are therefore to
 require you and every of you to apprehend the said
 and and them, and each of them safely to
 convey to the house of correction for the said county of Middlesex
 and deliver them to the keeper or master thereof, together with
 warrant; hereby commanding also you the said keeper or master
 receive them the said and
 into your said gaol, and them to put to hard labour
 and safely keep for the space of three days respectively, as the
 act directs, and no longer. Given under my hand and seal
 day of 1739.

An Indictment for stopping and obstructing Highway.

1 Lut. 490.

162. Berks, to wit. **T**HE jurors, &c. that whereas
 the time of which the memory of
 is not to the contrary, it was used that the liege subjects of the
 the king had, and lawfully used, a certain common highway
 N. in the county of Berks aforesaid, in a certain place there, con-
 leading from the town of N. aforesaid,
 the borough of L. in the county aforesaid, for themselves and
 chattels, without any obstructing or hindrance by any ditch
 hedges, or other obstacles whatsoever; nevertheless one W. A.
 N. aforesaid in the county aforesaid, on the 23d day of March
 the year of the reign

hath dug and erected a ditch and quickset hedge at N. aforesaid
 in the place aforesaid, upon the common highway aforesaid,

keeps the said ditch and quickset hedge so dug and erected as
aforesaid, to the great obstruction and hindrance of the liege subjects
the said lord the king passing the said highways, and against
the peace of the said lord the king, his crown and dignity.

Warrant against a Person for letting Horses through Grounds to avoid the Toll at a Turn- pike.

63. Middlesex, to wit. **W** Hereas C. D. of, &c. was this G. 1. c. 30.
day legally convicted before me,
the oaths of, &c. of driving several horses through certain
grounds adjoining to the highway leading to Hampstead, to avoid
the payment of the toll (that is due by statute from all persons pas-
sing the said highway) contrary to the statute aforesaid: These
therefore in his majesty's name to require you to levy the sum of
£10. on the said C. D. by distress and sale of his goods for the
sum aforesaid. Given, &c.

An Appointment of a Receiver of Toll at a Turnpike.

At the general quarter-sessions of the peace held at, &c.
on, &c.

64. **W** E whose names are hereunto subscribed, and seals af-
fixed, being justices of the peace for the county of,
&c. aforesaid, do (by virtue of an act of parliament made and
passed, &c.) hereby appoint C. D. of, &c. receiver and collector of
the toll (for the year ensuing) ordered by the said statute to be paid
for all horses, coaches, waggons, carts, cattle, sheep, &c. at the
turnpike erected on the highway leading, &c. for the reparation of
the said way, being 1 d. for every coach, &c. And if any person
shall refuse to pay the said toll, the said C. D. is hereby appointed
to distrain and detain any horse, coach, &c. until the same, and the
charge of distress, shall be fully satisfied and paid; and the said
toll so from time to time received, the said C. D. is to pay, to, &c.
surveyor of the said roads, and to account for the same to us, or
some other justices of the peace of this county when thereunto requi-
red. Given, &c.

An Adjudication of Justices when Roads are repaired by a Turnpike.

At the general quarter-sessions of the peace held at, &c.
on, &c.

165. **W** Hereas the justices of the peace for the county of Middlesex, have power and authority by act of parliament, made and passed, &c. to adjudge and determine when highways leading to, &c. are sufficiently repaired and amended whereupon the tolls therefore appointed, on payment of the money borrowed on the credit of the act, with the interest and the charge of passing the same, are to cease: We the undersigned justices, do by virtue of the said power, and on due certificate thereof, here adjudge, that the said highways leading to, &c. are sufficiently amended and repaired as they ought to be, and that the said tolls ought immediately to cease and determine, upon paying of the money borrowed on the said act with the interest. Given, &c.

C H A P. LIX.

Bridges.

1. **A** LTHO', strictly speaking, bridges are not under the cognizance of surveyors of the highways, yet in regard they have so near a relation thereunto, it may not be improper to add a few things in this place concerning them.

By whom
bridges ought
to be repaired.

2. The county of common right is bound to repair public bridges: But a particular person, town, &c. may for a special cause be bound to repair them; as by tenure, prescription, &c. 2 Ld. Raym. 1251. Reg. v. Justices of Liberty of St. Peter's York. If a private person build a private bridge, which after becomes of publick convenience, the whole county is bound to repair it. 6 Mod. 307. Cro. Car. 365. Black 74, 75. And where cannot be discovered who ought to make good the repairs of bridges, it must be presented by the grand jury in the quarter-sessions and after their enquiry and an order of sessions upon it, four justices, whereof one to be of the *quorum*, may send for the constable of every parish, or two of the inhabitants of each parish, to appear before them at a fixed time and place to make a tax, and the justices shall tax every inhabitant in a reasonable sum for the reparation of the bridge, &c. Also appoint collectors of every hundred

hundred to collect the money, and distrain for the same; and surveyors to see the repairs done; both of whom are to be accountable to the justices in sessions. Statute 22 H. 8. c. 5. It is sufficient, if it be presented that it is a publick bridge within the county, and out of repair; without presenting by whom it ought to be repaired. Mich. 12 G. 2. *The King against The Inhabitants of Middlesex*, Andrews 285.

3. By the statute 1 Ann. c. 18. justices in sessions, upon presentment made that a bridge is out of repair, may assess every town, parish or place in proportion towards the repairs thereof; the money assessed is to be levied by the headboroughs or constables, &c. by distress and sale of goods, if not paid in ten days after demanded; and when levied must be paid to the high constables of hundreds, who are to remit the same to treasurers, &c. appointed by the justices, to be employed according to their orders and directions. And if any of the officers neglect to assess, collect or pay the money, they shall forfeit 40 s. and receivers taking money, without orders of justices, shall forfeit 5 l. Collectors, &c. of the tax to be allowed 3 d. per pound. This statute confirms the 22 H. 8. c. 5. in most things, and on an indictment for not repairing of bridges, a fine may be set by the justices in sessions on any inhabitant of the county, being made defendant to the indictment, who shall have contribution from the rest, &c. 6 Mod. Rep. 307.

4. If bridges are within two precincts, then the inhabitants of each precinct ought to pay their respective parts towards the repairs. Roll. Abr. 368. But if it can be proved, that a man or his ancestors have time out of mind repaired a bridge, such prescription shall bind him and his heirs, where it is done at first by reason of some tenure of his lands; for particular persons are not bound by prescription to repair, &c. if it be not in respect of the tenure of the land, or of some profit arising from the bridge. 13 Co. Rep. In both which cases he must repair, and not the county. So 'tis likewise of any corporation real or temporal. And where a charge is by reason of tenure, every owner of the land is to be charged in proportion. A lord of a manor is not chargeable merely as such, as was resolved in Sir John Bucknall's case, by Holt C. J. and the whole court of B. R. although Holt had been of another opinion at the trial at the assizes. *Regina versus Sir John Bucknall*. 2 Ld. Raym. 792, 804.

If any person hath toll or other profit for passage over a bridge, he ought to repair it; and if a bridge was built at first for a private purpose, and afterwards becomes necessary for the publick, the county must repair it. 2 Inst. 701. *Reg. versus Wilt.* 1 Salk. 359. Mod. Cases 191.

The persons who repair bridges must likewise repair the ends for 300 feet at each end of the bridge, 2 Co. 2. and they

may enter on the lands contiguous, and lay stone, timber, and other materials there for repairing of the said bridge, without being prosecuted by the owners of such lands, because 'tis for the publick good.

No fines to be returned into the exchequer.

7. In cases where persons are bound to repair by tenure, and the party indicted found guilty for not repairing, the king may pardon the fine, but not the offence: for that continues still, and he may be indicted again. 2 Co. 30. No fines upon presentments or indictments, &c. shall be returned into the exchequer, but shall be paid to the receiver appointed by the justices; and all matters concerning repairing and amending bridges shall be determined in the county where they are situated, and not elsewhere; and no presentment or indictment shall be removed *certiorari* before traverse and judgment. 22 Car. 2. c. 12.

Inhabitants may be witnesses.

8. And by the same act, if any suit be brought for putting that act in execution, the defendant may plead the general issue, and give the act of 22 Hen. 8. c. 5. and also this act in evidence, and if he has a verdict, shall have double costs. And by the same act 'tis also further provided, that the evidence of the inhabitants of such places where the bridges are in decay, shall be taken, and admitted at any trial upon an information or indictment, &c.

9. On an indictment for not repairing of bridges, a fine shall be set by the justices in sessions on any inhabitant of the county being made defendant to the indictment, who shall have contribution from the rest, &c. 6 Mod. Rep. 307. And the way for the justices, is to do all things which relate to bridges at the open sessions, as well where 'tis not known who shall repair, as where the person obliged to repair is known.

10. The act of 22 H. 8. c. 5. doth not extend to the citizens, burgesses, or members of the same, where the warden, mayors, bailiffs elected, and jurats of the same, have such power and authority as justices in their shires, &c. None can be compelled to make new bridges where never any were before, but by authority of parliament. 1 Roll. 368.

Cases of repairing bridges.

11. If one erect a mill for his private profit, and make a new cut for the water to come to it, and a new bridge over the cut, where the king's subjects pass and repass, it must be repaired by those who have the mill, and not the county. 8 E. 2. B. adjudged for Bow bridge and Channel bridge, against the city of Stratford; and it is now repaired by the city of London, who hath the mill. 1 Danv. Abr. 743. p. 2. And where a man or his ancestors or predecessors, have used time out of mind to repair a bridge, the king cannot acquit or discharge them thereof. Fitz-G. Abr. 94.

12. Justices of peace, where a decayed bridge is, may cause process into the county where the party or land chargeable with the repair is. Dalt. 45.

13. Indictment for not repairing a bridge in *Nottinghamshire* against all the inhabitants of the county; they plead that J. S. ought to repair to it, *absque hoc* they, &c. The attorney general replies, that they *absque hoc* J. S. issue joined in the last traverse, and tried by a jury of *Middlesex*, because they are all parties. *Nota hoc*, and the manner of this pleading and issue. *Rex Inhab. de Com. Nottingham, M. 26 Car. 2. in B. R. 2 Lev. 2. 3 Keb. 370. 1 Danv. Abr. 744. p. 1.* Adjudged upon Cases of repairing bridges. trial at bar, on an information for not repairing a common bridge, which the defendants were bound to repair, that if a manor is held by the tenure of repairing a bridge or highway, which manor afterwards comes into several hands; that in such case every tenant of every parcel, either of the demesnes or services, is liable to the whole charge, but shall have contribution of the rest. 'Tis true, the lord of the manor may agree with every purchaser to discharge him from repairing; but such an agreement will not alter the remedy which the publick may have; it only binds the lord, who shall never apportion the charge, and make the remedy for the publick more difficult; neither shall he take away the remedy by alienations to persons unable to pay, and though the manor comes to the crown, the charge shall continue. *Reg. v. Duke of Buccleugh & al', 1 Salk. 58. Mod. Cases 150.*
14. Any inhabitant of the county may be a witness, but the jury must be of the next county. *1 Salk. 159. Mod. Cases 191.*
16. Generally and of common right the whole county is liable, and not the owners of the land adjoining. If evidence can be given that a man hath once repaired, tho' not for many years, yet those who have his estate in the land shall be liable, because it shall be supposed to be done by reason of his tenure, unless some other cause can be shewed; and when a charge is by reason of tenure, every owner of land is to be charged proportionably.
15. Grand juries ought to find who are to repair bridges. And justices of peace are to award process to get bridges repaired. *Dalt. 45.* And a bridge between two counties is to be repaired between them. *Poph. 192. Roll. Abr. 358.*
16. By stat. 14 Car. 2. c. 6. all bridges shall have sufficient wall, or posts and rails on each side four foot high at least, from time to time to be kept sufficiently repaired. The taxation for repair of bridges ought not to be made by the justices without the consent of the constables or inhabitants, nor by them without the justices; and this tax ought to be upon every inhabitant in particular, and not to be set upon the hundred, parish, town, &c. for then one or few might be distrained upon for the whole. *Co. 2 Inst. fol. 704.*

How bridges are to be mended in cities, &c. which are counties of themselves.

17. Where a franchise, city or borough, is a county of itself and hath not four or more justices of the peace (whereof one more are of the *quorum*) in this case no other justices of the peace in any shire or county have any power to meddle there. By act of 22 Hen. 8. c. 5. But such decay must be amended, the common law, by such remedies as were antiently, before statute of 22 H. 8. c. 5.

18. By stat. 12 Geo. 2. c. 29. the charges of repairing and amending bridges, and highways at the ends thereof, are to be paid out of the general county rate. And no money shall be applied to the repair of bridges, till presented by the grand jury at the assizes or sessions, of their insufficiency, inconvenience or warrant of repair.

19. When any publick bridges, ramparts, banks, or co are to be repaired at the expence of the county, the justices at their general or quarter-sessions, after presentment by the grand jury of their want of repairs, may contract with any person for rebuilding, repairing, and amending the same, for any term not exceeding seven years, at a certain annual sum: In order to which publick notice must be given of the justices intending so to contract, and the contracts are to be made at the most reasonable price proposed by the contractors, who are to give security for the performance thereof to the clerk of the peace. And all contracts when agreed to, and all orders relating thereto, are to be entered in a book, to be kept by the clerk of the peace for that purpose, who shall keep the said book amongst the records of the county, to be inspected by any of the justices at all seasonable times, and by any person employed by any parish or place contributing towards the same without fee. *Ibid.*

20. And by stat. 14 G. 2. c. 33. the majority of the justices at the general or quarter-sessions are empowered to purchase lands (not exceeding an acre) near a county bridge, to enlarge or rebuild the same; to be paid for by the treasurer, out of the county rates, by order under the hands and seals of the majority of the justices in their said sessions; which lands so purchased shall be conveyed to trustees, appointed by the justices in sessions, for enlarging or rebuilding such bridges.

1. An Order of Sessions for repairing a Bridge.

Sheweth, to wit. At the general quarter-sessions of the peace, and so forth, of our lord the king, held for the county aforesaid at L. in the same county on the day of in the year of the reign of our sovereign lord George, &c. and in the year of our Lord God, &c.

W Hereas the inhabitants of, &c. in the county aforesaid, were at the last general quarter-sessions held for the said county indicted for not repairing a bridge called, &c. then and now in decay: And whereas upon trial of the travers joined, and the county having notice, it was then and there found that the said inhabitants ought not to repair the said bridge, and the jury having presented, that it cannot be made appear that any particular hundred or parish, lands or tenements, in the said county of, &c. ought of right to repair the same: It is therefore now ordered by this court, and we do hereby, according to the form of the statute in that case made and provided, order and direct, that the said bridge shall be well and sufficiently repaired by the inhabitants of the county of, &c. within which the said bridge standeth, and that the justices of the peace, within their several divisions, do take care of the raising monies for that purpose. In witness, &c.

2. A Warrant to the Constable, &c. to make a Tax for the Repairs of a Bridge, pursuant to the aforesaid Order.

Sheweth, to wit. **W** Hereas at the general quarter-sessions of ^{22 H. 8. c. 5.} the peace, held for the county aforesaid, ^{Four justices, quorum unus.} &c. on the, &c. last past, the grand jury presented the bridge called, &c. in the parish of, &c. in the said county, to be in decay and out of repair, and the said decays and reparations were then and there ordered to be amended, and made good, at the charge of the county: These are therefore, in his Majesty's name, to command you, the said constable and inhabitants aforesaid, that you do, immediately upon receipt of this precept, make a taxation of all and every the inhabitants of the hundred or division of, &c. aforesaid, for the raising of the sum of, &c. to be applied towards the repairing of the bridge aforesaid, and that you do bring the said tax, fairly written and subscribed by you, or some of you, unto us, at the house of, &c. on, &c. next, for our approbation, and that we may further proceed therein, as to justice shall belong. Given, &c.

CHAP. LX.

Of Scavengers.

1: **T**HOUGH there have formerly been several acts of parliament for the paving several streets in London and the outparts, as particularly in the 24, 25, 32, 34 & 35 Hen. 8. 13 & 23 Eliz. yet I do not find any statute for cleaning or lighting the streets of London or Westminster, before the restoration of King Charles II. but in the 13 & 14 year of his reign an act passed, empowering the King to nominate commissioners to survey, order and manage the highways, streets, &c. of London and Westminster, and other places within the bills of mortality; but this act is expired.

Account of several acts about scavengers.

2. The year after the fire of London, being the 19th year of that king's reign, another statute was made, serving chiefly for vesting the sole power of paving, cleaning and lighting the streets, &c. within the city of London and liberties thereof, in commissioners.

3. The statute of 22 & 23 Car. 2. c. 17. confirms and makes perpetual that of the 19th of the said king, which was only temporary before, and settles the power of the commissioners, and gives them power of raising money and laying taxes, &c. within the city of London and liberties thereof. And this was all that was done in this affair, till the second year of William and Mary when an act passed, which is the basis or ground-work on which the law, in a great measure, now stands in this matter; though there has since passed another statute relating to this affair in the 8 & 9 Wil. 3. and another in the 1 Geo. 1. but that of the 2nd of William and Mary is the most particular.

2 W. & M.
cap. 2.

4. By this statute, two tradesmen are to be chosen scavengers on Monday and Tuesday in Easter week, yearly, in every parish within the weekly bills of mortality, by the constables, churchwardens, &c. and other inhabitants, who must take upon them the office in seven days after election and notice, under the penalty of 10 l. to be levied by distress, by virtue of a warrant from one justice, and for want of a distress, the offender is to be committed; the penalty is to be employed in repairing the highways and streets in the same parish. 2 W. & M. c. 2. An order of two justices appointing scavengers for St. Giles parish was quashed, because the persons elected are set out in the order to be tradesmen, without shewing that they are able persons. Michaelmas 11 Geo. 2. The King against The Justices of Middlesex, Andrews 72.

5. Scavengers every day, except *Sundays* or *holidays*, are to bring their carts into the streets, and give notice by a bell or otherwise, of carrying away dirt, and to stay a convenient time, every day, &c. shall forfeit 2 l.

6. The inhabitants in *London, Westminster, Kensington, South-ark*, and within the bills of mortality, are to sweep their streets every *Wednesday* and *Saturday*, or they forfeit for every neglect three shillings and four pence; this is increased to ten shillings by statute 8 & 9 W. 3. c. 37. Inhabitants to sweep Wednesday and Saturday before their doors, &c.

7. Persons laying dirt, &c. in the streets before their houses, are liable to 5 s. penalty; and laying ashes, dirt, &c. before the houses and walls of others, or before church walls, or throwing noisome things in the common sewer, highway, or private vaults, forfeit 1 l. And hooping or cleansing vessels in streets, &c. mending coaches or sawing timber or stones, throwing dung, soil, &c. likewise incur a forfeiture of 1 l. But justices in their petit sessions, may give scavengers liberty to lodge their dirt in vacant places near the streets, satisfying the owners for the damage; and if the demands of the owners are unreasonable, the justices have a power to moderate the price. Sessions may give scavengers leave to lay their dirt, &c.

8. Inhabitants of houses are to keep the streets, lanes and alleys before their doors paved to the middle of the highway, or shall forfeit for every perch or rod 1 l. and if not amended, 10 s. a week till done. Owners of houses unoccupied are liable to the like penalties. No swine shall be kept in backyards, &c. of paved streets, on pain of forfeiture. And an indictment will lie for keeping hogs in the back streets in town, at the common law; although by *stat. 2 W. & M. sess. 2. c. 8. sect. 20.* there is a particular penalty appointed for this offence. *Regina v. Wigg, 2 Ld. Raym. 1163.* Inhabitants to keep their doors paved, &c.

9. One justice may certify to the sessions what new ways are fit to be paved, and owners and inhabitants of houses new built, not paving or amending the ground before their houses, forfeit 2 l. for every perch or rod, and the like *per week* for delaying. But when paved, they are only subject to the same penalty as others. One justice may certify what new ways are fit to be paved.

10. Justices of *Middlesex* may, at the quarter-sessions, make rates for paving *Kensington*, &c. persons aggrieved by a tax, &c. or determination of any justices, &c. may appeal to the sessions, whose order is final.

11. The justices in sessions may order an assessment to be made, not exceeding 4 d. *per pound* for lands, and 8 d. for every personal estate every year, and constables, churchwardens, &c. may make a tax, being allowed by two justices, to be collected quarterly, and to be levied by distress and sale, &c. if not paid within 14 days. Sessions may order an assessment, &c.

12. By the statute 1 Geo. 1. c. 52. and 9 Geo. 2. c. 18. the quarter-sessions may appoint scavengers, and order the repairing of market-towns, and &c.

and cleansing the streets in any city or market-town, and appointing persons to make assessments on all owners and occupiers of lands and houses equally, not exceeding six pence *per pound per annum*, to defray the charges of such scavengers, which may be collected by such as the justices shall think fit, and levied in eight days by distress, &c. See stat. 22 Geo. 2. c. 20. for making more effectual stat. 11 & 12 Gul. 3. for cleansing, paving and enlightening the streets of *Bristol*, and for regulating hackney coachmen, &c. there.

13. The assessments for scavengers of the parish of *St. Andrew Westminster*, and *St. James*, shall be rated according to the custom of that city.

Ancient streets of London to be maintained according to custom, &c.

14. Ancient streets of *London* are to be maintained according to custom, and cleansing of streets, &c. must be managed according to the ancient usage of the city of *London*. The lord mayor or any alderman may present upon view any offence within the city and liberties thereof, and assess fines not exceeding twenty shillings for every offence, to be paid to the chamberlain for the use of the city.

When scavengers are to account.

15. Scavengers, when new ones are chosen, must account 28 days before two justices of peace for the monies assessed and collected, and what remains in their hands must be paid to the new officers; refusing to account they shall be committed to prison they do, and till payment is made. And the penalties *supra* are recoverable by distress, by warrant from a justice, &c. to the constable; and if the offender is convicted by view of the justice one half of them goes to the poor, and the other to the repair of the ways; but if by evidence, the penalties are distributed between the poor and prosecutor.

How penalties are to be recovered, &c.

A Warrant by two Justices to levy the Money for Scavengers, &c.

To the constables, headboroughs, and scavengers of the parish of _____ in the said county, and to each and every one of them.

16. Midd. ff. **W** Hereas _____ an inhabitant and occupier of an house in _____ street in the said parish of _____ duly rated and assessed the sum of _____ towards the payment of the scavengers or rakers in the said parish for cleansing the streets, lanes, courts and alleys therein; and taking, or causing to be taken, and carried away therefrom the dust, dirt, ashes, filth, and soil for this present year _____ and has neglected and refused to pay the said sum of _____ rated upon him, although the same has been demanded of him by the scavengers of the said parish at his house, as appears upon oath unto us, two of his

*His Majesty's justices of the peace for the said county (quorum
cons): These are therefore in his Majesty's name to require you,
some of you, forthwith to levy the said sum of
distress and sale of the goods and chattels of the said
rendering to him the overplus (if any be); and if no
distress can be had or taken, that then you certify the same to
to the end we may further proceed therein as to law doth apper-
tain. Given under our hands and seals, this* day

17

17. The householders within the weekly bills of mortality, *Householders to*
whose houses adjoin to the streets, shall hang out lights from the *hang out lights,*
when it grows dark till twelve o'clock at night, from *Michaelmas*
Lady Day, or pay for lamps, under the penalty of two shillings
for every default, &c. This is altered as to *London* by a subse-
quent statute, viz. 17 Geo. 2. c. 29.

18. And by the stat. 8 & 9 W. 3. c. 37. relating to scavengers, *Rules about hay*
owners of hay brought into the *Hay-market* are to pay three- *and other carts.*
pence per load, and for straw one penny, to such as justices of
peace shall appoint, towards mending the street called the *Hay-*
market; and no person shall suffer their waggons, carts, &c. to
stand in any place within the weekly bills of mortality laden
with hay or straw, from *Michaelmas* to *Lady Day*, after two
o'clock in the afternoon, nor from *Lady Day* to *Michaelmas*, after
three o'clock, on pain of 5 s. for each offence.

19. By statute 2 W. & M. c. 8. new sewers made in any of
the said parishes since 12 Car. 2. shall be subject to the commis-
sioners of sewers, who may direct making new ones, and alter any
valances, cross gutters and channels in the streets or lanes.

20. Officers may in the day-time by warrant from the lord-
mayor, or one justice, &c. search for swine, and drive them
away, and sell them, and deliver the money to the churchwar-
dens, &c. for the use of the poor.

21. In actions commenced for putting 22 & 23 Car. 2. c. 17:
intituled, *An Act for the better paving and cleansing the streets,*
&c. in the city of London) or 2 W. & M. c. 8. in execution, the
defendant may plead the general issue, and give the act or special
matter in evidence, and if the plaintiff is nonsuit, discontinue, or
verdict against him, shall pay treble costs. Highways leading
from the east side of *Clerkenwell Green* to *St. John's Street*, shall
be paved as that act directs.

22. By statute 8 & 9 W. 3. c. 37. where one side of a street
or lane lies within the bills of mortality, and the other side
without, the justices of peace may cause the respective inhabitants
to pave that other side, under the same penalty, as if the same
had been within the bills of mortality.

23. Where there is any liberty, precinct or village within the
weekly bills, that uses to repair their own highways, and also
perform

perform days work to other highways, and are or shall become unable, the justices of peace at their special sessions to be held every four months, may allow so many days work, as the said justices shall think fit, to be employed by the inhabitants of such liberty, &c. and the residue of the days work, as such inhabitants are liable to, shall be employed in repairing the other highways.

24. So much of the antient highway leading from *Tottenham Court* near *St. Giles's* pound towards *Tyburn*, as is now built on both sides thereof, shall be hereafter repaired, paved and maintained by such persons as have heretofore used to repair, pave and maintain the same, under the penalties aforesaid.

25. *N. B.* The pavements of streets are to be repaired by the inhabitants of the said streets, and the scavengers are to be paid by the parishioners: Persons are bound to repair their own doors at their own costs, they having the principal benefit of it, and those persons who are thus bound to repair the pavements, are to contribute to the payment of the scavengers rates. *Rex v. Inhab. Newington, Salk. Report 356.*

26. By stat. 2 Geo. 3. c. 21. commissioners are appointed for paving, cleansing, and lighting the squares, streets, and lanes within the city and liberty of *Westminster*, the parishes of *St. Giles in the Fields*, *St. George the Martyr*, *St. George Bloomsbury*, that part of the parish of *St. Andrew Holborn* which lies in the county of *Middlesex*, the liberties of the *Rolls* and *Savoy*, and that part of the duchy of *Lancaster* which lies in the county of *Middlesex*; but as this act is confined to the places above mentioned, and the parish officers are not particularly concerned in the execution of it, it does not appear necessary to enter further into it in a work of this kind.

Case of Newington-Butts.

27. In the case of the parish of *Newington-Butts*, upon the statute of 2 W. & M. c. 8. for paving and cleansing the streets, the question between the inhabitants within this parish was, that part of them which inhabited within the county out of the paving, should be contributory to the scavenger's rates; and the court held the rate, which charged all the inhabitants generally to be good. *Skinner 643.*

A Scavenger's Rate.

28. **A** Rate on the inhabitants of the parish of *St. Giles in the liberty of Westminster* in the county of *Middlesex* (living in the ward) in the said parish for carrying away the dirt, dust, ashes, filth and soil out of the streets, lanes, courts, alleys and publick places of the said ward, from *Easter Tuesday*, April the 11th 1732, to *Easter Tuesday* 1733. Made by us the churchwardens, overseers of the poor, surveyors of the highway

highways, constables and other antient inhabitants of the said pa-
 rish, the day of 1732, at two pence
 the pound for each pound by the year.

A. B. } Churchwardens.
 C. D. }
 E. F. } Overseers of the poor.
 G. H. &c. }

WE whose names are hereunto subscribed, his Majesty's ju-
 stices of the peace for the city and liberty of Westminster
 in the county of Middlesex, (one whereof being of the quorum)
 do approve of, allow and confirm the foregoing rate. Given under
 our hands and seals, &c.

A Warrant to levy ten Pounds by Distress and Sale
 of the Goods of one refusing to take on him the
 Office of Scavenger, being duly chosen, and con-
 firmed by two justices, &c.

Middlesex, **F**Orasmuch as it hath been duly proved before 2 W. & M. c. 3.
 to wit. me, this present day, that R. G. of your
 parish, grocer, hath refused to take upon him, and execute the office
 of scavenger of the said parish for the year insuing, within seven
 days next after he was legally chosen and appointed to serve in that
 office, and thereupon confirmed by two justices of peace within that
 jurisdiction, according to the form of the statute in that case made
 and provided, by means whereof he hath forfeited the sum of ten
 pounds: These are therefore (in his Majesty's name) to charge and
 command you, that you, some or one of you, do forthwith, upon sight
 hereof, levy the said sum of ten pounds, so by the said R. G. for-
 feited for the offence aforesaid, according to the said statute, by
 distress and sale of his goods and chattels (rendering the overplus
 unto the said R. G. if any such shall remain after your reasonable
 charges in and about the said distress and sale are first deducted) the
 said monies so levied by you to be paid to the surveyors of the high-
 ways of your said parish, to be by them employed towards amending
 the same, according to the directions of the statute aforesaid. Where-
 of fail not, &c. Given, &c.

A War-

A Warrant against a Scavenger, who collected the Monies the Year preceding, for refusing to count and pay over the Monies in his Hands the present Scavengers.

To all constables, &c.

2 W. & M. c. 8. 30. Middlesex,
Two justices.

F Orasmuch as A. B. late one of the scavengers of the parish of L. was duly summoned to wit. appear before us on the day of instant, at the sign of the Mitre in, &c. and to bring with him a true account in writing of all such monies as were him received the last year, towards the cleaning the streets of the said parish; as also the monies then remaining in his hands, to be paid over to the present scavengers of the said parish, according to the directions of a late act of parliament in that case made and provided: And whereas the said A. B. did refuse to come before at the time and place above mentioned: These are therefore (in Majesty's name) to command you, and every of you, to apprehend the said A. B. and bring him before us, to be dealt with according to law. Given, &c.

The Form of a Presentment, on View of a Justice of Peace, of a paved Street out of Repair.

31. Middlesex,
to wit.

J. S. esquire, one of the justices of the lord the King, assigned to keep the peace in the county of Middlesex, as also to hear and determine divers felonies, trespasses, and other misdeeds in the said county perpetrated, by virtue of the statute in such case made and provided, upon his own view presented, that a certain street and common highway, called lying and being in the parish of in the county aforesaid, and leading from a certain place, called in the same county, and containing in length and in breadth on the day of and year of the reign of now king of Great Britain, &c. and continually afterwards, until in the year aforesaid, was and still is very ruinous, broken, and in such decay, for default of due repair and amendment of the same, that the liege subjects of the said lord the king could not, during the whole time aforesaid, and cannot yet, pass, repass, ride, or travel through, or along the said street and common highway with their coaches, carts and carriages, as they used and ought to do, to the great

at damage and common nuisance of all the liege subjects of the king, going, returning, passing, riding, or travelling through or along the said street and common highway, and against the peace of the said lord the king, his crown and dignity: And R. N. late of the parish aforesaid in the county aforesaid, P. L. late of the same, esquire, R. N. late of the same, gentleman, and D. H. late of the same, gentleman, ought, by reason of the tenure, possession, and inhabiting of their houses adjoining the said street and highway, to repair and amend the said common street and highway, when and so often as should be necessary. Witness whereof the aforesaid J. S. the aforesaid justice of the peace, hath set his seal to this present record, the said
in the year aforesaid.

Affidavit to convict a Scavenger for not bringing Carts, &c. to carry away the Dirt, &c.

Midd. A. B. of the parish of
to wit. A. B. within the county of Middle-
aforesaid, labourer, maketh oath that and
who are the scavengers for this present
in the parish of aforesaid
did not, neither did any raker or other officer on the
day of this instant (the
being no Sunday or holiday) bring or cause to be brought
a street called street, which is in the
any cart, dungpot, or other fitting car-
riage, and there give notice in such sort and manner, that all
persons concerned might bring forth their respective dust, dirt,
filth and soil to them, as by law is required, although
carts and carriages might there pass. And this deponent
saith, that neither of the said
the scavengers, nor any raker or other officer,
on the day of this instant
or cause to be carried away the dust, dirt, ashes, filth
soil from street in
aforesaid

A Summons on the foregoing Affidavit.

scavengers for this present year of
in the parish of
within the county of Middlesex.

Midd. Y^{OU} are hereby required personally to be and
to wit. appear before me one of his Majesty's justices
the peace for the said county, at my house in
street

street in the said parish, on
 o'clock in the forenoon, to shew cause
 you should not be convicted for not bringing or causing to
 brought on the day of this instant
 (the same being no Sunday or holiday) into a street called
 street, which is in the said
 any cart, dungpot, or other fitting carriage,
 not giving notice in such manner, that all persons concerned
 might bring forth their respective dust, dirt, ashes, filth
 soil to them, as by law is required; and also for not sweep
 and carrying or causing to be carried away the dust, dirt, ash
 filth or soil from street aforesaid, on the
 day of this instant
 dated this day of, &c.

A Warrant to demand the Penalty of the Scavengers.

To the constable and headborough of the parish of
 within the county of Middlesex, and to all others whom this
 may concern.

34. Midd. **W** Hereas
 to wit. for this present year
 of in the county of Middlesex aforesaid,
 said, have been this day convicted before me one of his Majesty's
 justices of the peace for the said county of Middlesex, as
 by their own confessions, as upon the oath of
 being a credible witness, for that they the said
 the said scavengers, did not, neither
 either of them, nor any raker or other officer on their behalf
 on (the same being no Sunday
 holiday) bring or cause to be brought any cart, dungpot, or other
 fitting carriage, into a street called
 which is in the said and in the said parish
 in the said county of Middlesex, (where such carts and carriages can pass) nor did by a bell, bell
 clapper or otherwise, make a distinct and loud noise, and give
 notice to the inhabitants of the said
 of their coming, nor did abide there a convenient time, in such
 sort that all persons concerned might bring forth their respective
 dust, dirt, ashes, filth and soil to any cart or carriage so staying
 as aforesaid, nor did they or any of them rake, sweep up into heaps
 and carry or cause to be carried away the same, or any part thereof
 of, as required by the statute in that case made and provided,
 which offence they the said
 have forfeited the sum of each of
 respectively

respectively. These are therefore in his Majesty's name, and in pursuance of the said statute in that behalf made, to require you, withwith to demand of each of them, the said penalty, by writing left at the respective houses or dwelling-places of the said

and within the space of six days after the date hereof, to certify to me what you shall have done in the premises, to the end I may further proceed therein as the law directs; and hereof fail not. Given under my hand and seal, this day of, &c.

A Warrant to levy the Penalty upon a Scavenger.

To the constable and headborough of the parish of
in the county of Middlesex, and all others whom it
may concern.

35. Midd.
to wit.

W Hereas
one of the scavengers for this present year
of the parish of
in
the said county of Middlesex, stands convicted before me one of
his Majesty's justices of the peace for the said county, upon the
oath of
(being a credible witness) for
that the said
the said scavenger, did not,
neither did any raker or other officer, on his behalf, on the
day of this instant

(the same being no Sunday or holiday) bring or cause to be brought
into a street, called
street, which is in the
said parish of
any cart, dungpot, or other

sitting carriage, although such carts and carriages might there
pass, nor did by bell, horn, clapper, or otherwise make a distinct and
loud noise, and give notice to the inhabitants of the said street of
his coming, nor did he abide there a convenient time, in such sort
that all persons concerned might bring forth their respective dust,
dirt, ashes, filth and soil, nor did he the said scavenger, or any
raker or other officer on his behalf, sweep, rake up into heaps, carry
or cause to be carried away on the said
day of

this instant
any dust, dirt, ashes, filth and soil,
out of
street aforesaid, as by law he ought, and
for which offence he the said
hath forfeited the sum
to be levied, imployed, and disposed of, as
the statute in that case directs. And whereas he the said

has been duly summoned before me, to shew cause why he
should not be convicted for his said default, and hath not shewn
sufficient cause: And whereas I granted my warrant dated the
instant, directed to the constable and
headborough of the said parish of
to demand
of him the said
scavenger, as aforesaid, the

Z

sum

sum of by writing, to be left at the be
 or dwelling place of the said and within
 space of six days from the date thereof, to certify to me what shou
 have been done in the premisses. And whereas
 one of the constables of the said parish of
 whom the said warrant was delivered to be executed, did on
 instant make a return of the said warrant
 and certified unto me, that in pursuance of the above-mention
 warrant, he had made a demand of him the said
 in such manner as is directed in the said warrant, and that
 hath not received from him the said the said fe
 seizure or sum of although 'tis more than
 days since he made such demand as aforesaid. These are therefo
 in his Majesty's name to require you, some or one of you forthwith
 on sight hereof, to levy the said sum of
 distress and sale of the goods and chattels of him the said
 rendering to him the overplus (if any be) and that y
 apply the same to and for such uses, and in such manner as t
 statute directs; and if no such distress can be had or taken, or sa
 tisfaction had, That then you certify the same to me, to the end
 may further proceed therein as to law doth appertain. Given u
 der my hand and seal, &c.

A Warrant to levy the Scavenger's Rate or Tax.

To the constables, headboroughs and scavengers of the parish
 of in the county of Middlesex, and to
 each and every of them.

36. Midd.
 to wit.

W Hereas
 an inhabitant and occupier of an house in
 street, in the said parish
 of was duly rated and assessed in
 sum of towards the payment of
 the scavengers or rakers in the said parish, for cleansing the streets
 lanes, courts and alleys therein, and taking or causing to be taken
 and carried away therefrom the dust, dirt, ashes, filth and soil for
 this present year and has neglected and refused to pay the said
 sum of rated upon h although the same
 has been demanded of h by the scavengers of the said parish
 at house, as appears upon oath unto us, two of his
 Majesty's justices of the peace for the said county, whereof one is
 of the quorum. These are therefore in his Majesty's name to re-
 quire you, or some of you, forthwith to levy the said sum of
 by distress and sale of the goods and chattels of the
 said rendering to him the overplus (if any
 be) and if no such distress can be had or taken, that then you cer-
 tify

the same to us, to the end we may further proceed therein, as law doth appertain. Given under our hands and seals, this day of, &c.

Warrant of Distrels against Persons refusing to put out Lights.

To the constable and headborough of the parish of
within the said liberty and
county.

Midd. and Westm.
to wit.

W Hereas in and by an act of parliament made in the second year of the reign of the late King William and Queen Mary, it is among other things enacted, That all and every householder within of the parishes, places or precincts in the counties of Middlesex and Surry, and city and liberty of Westminster, comprised within the weekly bills of mortality, whose house adjoins unto, or is near the street, from Michaelmas unto our Lady Day yearly, shall every set or hang out candles or lights in lanthorns, on the outside of the house next the streets, to inlighten the same for conveniency of passengers from time to time, as it shall grow dark, until twelve o'clock at night, upon pain to forfeit the sum of two shillings for every default (except such person or persons as shall agree to make use of lamps of any sort, to be placed at such distances in the street, as shall be approved of by two or more justices of the peace, as the said act may appear.) And whereas it has been duly proved upon oath unto us his Majesty's justices of the peace for this county, city and liberty, that A. B. C. D. and E. F.

having agreed, nor either of them having agreed to make use of any lamps placed at such distance (approved by two justices of the peace) did not, neither any or either of them, on the

until the hour and within the time before-mentioned, according to the said act of parliament, hang or put out at the outside of their respective dwelling-houses or places of abode in

the same being within the weekly bills of mortality, and in the parish of within the said liberty, any candles or lights in lanthorns, or any lights conformable to the said statutes; for which several offences they the said have respectively, and each

them hath forfeited the sum of

two shillings for each neglect or default; one moiety thereof to the use of the poor of the said parish, and the remainder to S. M. informer: And whereas they the said

have been duly summoned before us, to shew cause why they and
Z 2 each

each of them should not be convicted for their said several default and the said respective sums should not be levied upon them by distress, as the law directs, and have not appeared or shewn sufficient cause, although service of summons upon each of them has been duly proved upon oath before us for that purpose. These are therefore in his Majesty's name, and in pursuance of the said statute, require you, some or one of you, forthwith to demand of

money of Great Britain; and in case of refusal or nonpayment thereof within six days after demand or notice in writing to be given by you, some or one of you, at the respective houses or dwelling places of them the said

That then you levy the said respective sums of distress and sale of the goods and chattels of them the said

rendering to them and each of them the overplus (if any be) for default of payment, and want of such distress and satisfaction as aforesaid, that then you certify the same unto us, to the end we may further proceed therein as to law doth appertain; and be fail not at your peril. Given under our hands and seals, day of

38. A Warrant against a Person for laying Dirt &c. in the Street.

Middlesex, **W** Hereas complaint upon oath has been this to wit. made unto me, by S. P. &c. that R. K. inhabitant of your parish, on, &c. last past, laid in the street before his house a large quantity of dirt, &c. to the great annoyance of passengers who pass that way, and contrary to the statute in that case made and provided: These are therefore to command you to bring the said R. K. before me, or some other justice &c. to answer the premisses. Given, &c.

A Certificate of Justices for several Persons agreed together to put up a lamp or lamps.

39. Middlesex, **W** E, two of his Majesty's justices of the peace for the county of Middlesex, residing within the parish of in the said county, have, pursuant to an act of parliament, entitled, An Act for paving and cleansing the streets, &c. (the act) viewed a lamp situated at the end of street in the said parish which said lamp is maintained

the charge of

habitants of the said street, and of the parish of
 which we do approve and allow to be at a
 proper distance, and to be a sufficient and good light for their
 uses. Given under our hands, this day of, &c.

See 9 G. 2. c. 20. which has quite altered this matter in the
 city and liberties of London.

CHAP. LXI.

Of Constables.

Although, strictly speaking, a constable may be thought of the deriva-
 rather a peace, than a parish officer; yet in regard he is tion of the word
 in many cases concerned in parish business, we cannot omit say- constable.
 something concerning him in this place.

2. There are three different opinions among antiquaries and
 etymologists, concerning the derivation of the word constable.
 The first is, that it is derived from the two *Latin* words (*comes*
stabuli); but this seems more applicable to the earl marshal, or
 master of the horse, than to the constable; for this dignity ori-
 ginally was to take care of the king's stables, and therefore this
 derivation is deservedly rejected. The second, and to which
 Mr. Lambard in his treatise of constables seems to adhere, is,
 that it is derived from the two old *Saxon* words *cunninge*, *coninge*,
 or *cinge*, signifying a prince or king, and *stable*, or rather *staple*,
 denoting a prop or stay, and so *coningstable* (by contraction *con-*
stable) is as much as to say, the prop or stay of the king: But
 this opinion too is rejected by many, as not so well agreeing
 with his office in antient times. The third opinion is, that the
 word constable is derived from the two old *Saxon* or *German*
 words, (*coninge*, *cuninge*, or *cinge*, signifying a prince or king,
 and *stapelen*, which signifies to gather together) and this con-
 jecture seems the most probable; because it agrees the best with the
 office, not only of constable, but also with that of borsholder,
 borrowhead or headborough, thirdborough, chief pledge or
 tithingman.

3. For the better illustration of which it is to be observed,
 and it is allowed by all, as well as Mr. Lambard, that by the an-
 cient laws of this realm, before the coming of King William the
 Conqueror, it was ordained for the better preservation of the
 peace, preventing thefts, and repressing malefactors, that all the
 inhabitants

inhabitants should cast themselves into distinct societies of ten men and their respective families in a company, and that every one of these ten men should be surety and pledge for the good behaviour of the rest; so that if any one of them committed a crime, they should see him forthcoming, or in default thereof amerced; and thence these several societies come in some places to be called (even at this day) boroughs, or rather *boreis*, from the old word *boreos*, signifying pledges or sureties, and borsholder from *boroe* and *ealder*, signifying the chief, the head, or the elder. And in other places, (from the number of ten families thus associated) tithings, which is confirmed by what the late bishop Kennet tells us of tithingmen. In the Saxon times (says he) for the better conservation of peace, and for more easy administration of justice, every hundred was divided into ten districts or tithings, each tithing made up of ten friborgs, each friborg ten families, and within every such tithing [*statuerunt iustitios rios super quosdam decem friborgos quos decanos possumus appellare Anglice, vero sic De nos i. e. caput de decem*] which tithingmen or civil deans, were to examine and determine all lesser causes between villages and neighbours; but to refer all greater matters to the superior courts, which had a jurisdiction over the whole hundred. Kennet's *Parochial Antiquities*, p. 633.

4. In Kent these officers are called borsholders from *boroe*, pledge, and *ealder* or *elder*, signifying the chief, the head, or the elder; in Hampshire, and all the western parts, tithing men and their divisions of parishes, tithings; in Warwickshire and some others, where every third borough hath a constable, there the officers of the other two are called thirdboroughs; in Suffolk the hundreds are called rapes, and in the north ridings, wapentakes. In England there are 40 counties, besides 12 in Wales.

5. Now among several other good orders mentioned by Mr Lambard, which were observed in these tithings, there was one which was, that once every year every one of these pledges were presented by their chief pledge, at a general assembly for that purpose, that every man of twelve years of age might be sworn to the king, which we yet (in remembrance thereof) do call the view of frank-pledge, or the leet court. And as it was the business of the borsholder or tithing man, to present all the pledges or men in his borough or tithing; so it is more than probable, that the constable, on behalf of the king, had the care of gathering together and bringing forth, as well as of keeping the peace among all the pledges within such, or perhaps a larger division; and this seems not only to give the properest derivation both of the office and name of a constable, but also the reason of his superiority over an headborough or tithingman. And I am the more confirmed in this opinion, because the great Lord Bacon in his View of the Law, p. 5 & 6. tells us, that in ancient time, high constables of hundreds and petty constables in every

every town were yearly appointed by the sheriff in his turn, and were there sworn; and it is allowed by all, that the leets, where at this day the constables are regularly chosen and sworn, were originally derived out of the sheriff's turn. And the same great man, in his office of constables, tells us, that one end of the institution of the leet, was to take the antient oath of allegiance of all males above the age of twelve years; so that in all probability the high constables were at first appointed by the sheriff in his turn; but as the inferior leets were branched out from the sheriff's turn, the constables were in after-times chosen and sworn to them, to gather together and bring all the pledges to take the oath of allegiance, and to keep the peace among them; and also to present all matters of disturbance and nuisance of the peace, which they in respect of their office are presumed to have best and most particular knowledge of.

6. And Mr. *Lambard* tells us, that so late as about the beginning of the reign of King *Edward* the third, petty constables were devised in towns and parishes for the aid of the constables of the hundred; so of later times also borsholders, tithingmen, headboroughs, and such like, have been used as petty constables within their own boroughs and tithings; and yet not so universally, but that some of them have at this day none other but their old office. For in some of the western parts of *England*, you shall see that where there are many tithingmen in one parish, there only one of them is a petty constable for the king, and the rest do serve but as the antient tithingmen did; and in such case, where there are two or more tithingmen, and one of them is chosen at the leet, to execute the office of a constable, and the rest of them have been used time out of mind, to do nothing about the office of the constable, but to do other things; in such case the custom of the place may and must be continued, and such tithingmen shall not be compelled to do more than by custom they have used to do; otherwise, and in all other places, all these officers are comprehended under this word constable, and all these offices are contained within this office.

7. And thus much of the etymology or derivation of the word constable. I shall proceed to treat next, *first*, Of the manner of their election. *Secondly*, Of their office and duty in general. and *thirdly*, conclude with those parts of their office and duty, which relate to parish business. *First*, Of the manner of their election.

8. Of constables there are two sorts, (as hath been intimated) There are two sorts of constables, high constables, and petty constables; the first are for the whole hundred; the last only for some particular parish, village, hamlet, tithing, borough or liberty. He is an officer but for his own particular vill; and tho' he may execute warrants in any other part of the county, if directed to him by name, (as any other person may) yet he is not compellable to do it; tho' the contrary

Salk. 175, 176.

trary is practised in *London* by custom. *Comber.* 446. My Lord *Bacon* tells us, that tho' the high constable's authority and jurisdiction hath the more ample circuit, he being over the hundred and the petty constable over the village; yet he did not find the petty constable was subordinate to the high constable to be ordered by him; and therefore he doubted the high constable was not *ab origine*; but that when the business of the country increased, and the authority of the justices of peace was enlarged by divers statutes; then for conveniency's sake the office of high constable grew in use for the receiving the commands and precepts from the justices of peace, and the distributing of them to the petty constables, headboroughs, tithingmen, &c. and in token of this, the election of the high constables in most parts of the kingdom, is by the appointment of the justices of peace; whereas the election of petty constables is by the people.

9. The petty constables, headboroughs, tithingmen, &c. are not subordinate to the high constable in any thing that proceeds from his own authority merely; tho' his power is of a larger extent than theirs, as has been said; and in places where there are no constables but tithingmen, &c. there the authority of such parish officer equals that of the constable within his limits; for he is in effect, the constable of the place. But headboroughs, tithingmen, &c. appointed in a town or parish, having also the office of constable, cannot principally concern themselves in any matter of the constables being head officers; though in the absence of the constable they are chiefly to attend the service; and there are many things which a constable has power to do, that headboroughs and tithingmen cannot intermeddle with. *Dalt.* 3.

Where high
constables are
chosen.

10. High constables are chosen either at the quarter-sessions or in the court-leet; and where the latter is warranted by custom, the justices of peace cannot interpose, unless it be on a neglect of keeping such court, or in chusing them; when the justices, at their quarter-sessions, may appoint and swear a high constable, or issue their warrant to do it out of the sessions: But in case of refusal to serve the office, death, or removal, a justice of peace may chuse and swear another, though this is generally done by two justices; and the person chosen is to continue in the office till the next court-leet or the sessions; and then the steward or justices may either approve him, or appoint another to continue in for one year. If he is present when chosen, and refuses to take upon him the office, the steward may fine him, (the justice of peace may likewise bind him over to the assizes or sessions where he may be indicted and fined.) If he does not appear, the homage are to present his refusal at the next court, where upon he shall be amerced; and if he, being present, accepts the office, he is to be forthwith sworn in the leet. If absent, upon notice given by the steward, he is to take the oath before a justice. *Dalt.* 58, &c. Of common right, the homage in court

shall elect the constable; and this is the constant practice in Middlesex. *Per Cur'*, *Fletcher v. Ingram*, 1 *Ld. Raym.* 70.

11. A person chosen constable by the leet, or, in default of the leet, appointed by two justices, by force of *stat.* 13 & 14

2. ought to be summoned before a justice to take the oath, before he can be guilty of any offence, &c. *Comber.* 328, 329.

Sometimes the steward, and sometimes the jury claim the nomination, &c. *Ibid.* 351. The sessions may remove high constables and petty constables, the justices there being the best judges

in these cases. *Reg. v. White*, 1 *Salk.* 150. Justices of the peace, Who are ex-

clergymen, attornies, lawyers, physicians, ideots, poor, old, and black persons, are exempted from being chosen constables. But

empted from
being chose
constable, &c.

servants in antient demesne are not. 1 *Vent.* 344. *Mich.* 21 *Car.* 2.

A corporation of common right cannot chuse a constable: But they may by custom; and then they must prescribe for it. *Rex*

Barnard, 2 *Salk.* 502. A village and a constable are cor- relatives; but a hamlet has no constable. *Chorley's case*, 1 *Salk.*

175, 176. No man that keeps a publick house ought to be a constable. *Per Holt*, *Ibid.* But if this should be a rule, 'twould

be hard upon the other inhabitants in many places.

12. When constables are appointed, the steward of the court-leet, or the justices, administer the following oath.

The Oath of Constables.

YOU shall well and truly serve our sovereign lord the king, and the lord of this leet, (if appointed in the court-leet) in the office of a constable, in and for the hundred of A. or parish of, &c. until you be thereof discharged according to due course of law, or for the year insuing, and until another shall be sworn in your room; you shall from time to time well and truly do and execute all things belonging to the said office, according to the best of your knowledge.

So help you God.

N. B. The oaths of allegiance and supremacy appointed by *stat.* 25 *Car.* 2. *cap.* 2. do not extend to constables, churchwardens, &c.

13. Where neglects or miscarriages are either in keeping court-leets, or in chusing constables there, the justices at their quarter-sessions, or the major part of them, may appoint and swear a high constable; and this is the usual course at this time; but in case of refusal, death, or removal, one justice of the peace may choose and swear another. 11 *Car.* 1. *B. R. Trin.* 34

On neglects in
leets, sessions ap-
point and swear
constables, &c.

Car. 2. *Jones's Rep.* 212. 'Tis true, they may be sworn at any other time by a warrant from the sessions, and they may also be chosen out of the sessions by the greater number of justices of a division;

division; but this is not usual. 'Tis said the sessions can appoint a constable where none before. *Black. 87.*

The qualifications of a constable.

14. As for being qualified for this office, they ought to be honest, understanding and able men, and to be men of substance and not of the meaner sort, and resident where chosen; and if they are not duly qualified, two justices, upon complaint, may remove them, and appoint others. And though formerly it was not, yet now 'tis held, that a custom for every inhabitant to serve by turns is good; for if it happen on a woman, she may hire one to serve. *Sid. 355.*

One chosen constable may make a deputy.

15. Dissenters chosen constables may make deputies for the execution of the office, by 1 *W. & M. c. 11.* and other persons may make deputies; though formerly it was doubted; but they must answer for their miscarriages, unless such deputies are sworn and allowed by the court. *Moor 845. 3 Bulst. 77. 1 Rolls 274.*

Penalty on constable refusing to serve, &c.

16. Two justices (*quorum unus*) may appoint high constables in *Wales*, by *stat. 34 Hen. 8. c. 26.* If a constable, after he is duly chose, refuses to serve, justices may bind him over to the assizes or sessions, and there he may be indicted and fined; but you must alledge the place where he was required to take the oath, and before whom he refused to be sworn, and not *ad sessionem* generally; otherwise it may be quashed. *Style 124. 1 Keb. 418. 1 Mod. 24, 13. Allen 78. 2 Roll. Rep. 78. 3 Saund. 291. Sid 272. Style 394. Note;* A man is to serve the office of constable, in respect of his personal abode, and not in respect of his lands.

Case about a constable.

17. A person disobeying the order of justices for taking the office of constable upon him, was committed to gaol by the justices at the sessions; the person disobeying alledged, that he was not within the liberty; and it was adjudged, that the commitment was wrong; for he ought to have been indicted upon his refusal; and if he was found to be within the liberty, they might then assess a fine, and commit him till payment. *Cro. Car. 596. 15 Car. 1. B. R. Crawley's case.* Where a leet is orderly kept, and there is a due election of this officer from time to time, and no neglect or miscarriage therein, there the justices are not, in or out of their sessions, to meddle with the choice or removal of a constable; and if they should intermeddle in this case, or remove a constable settled by the leet according to the custom of the place, the leet may put him in again, and the *K. B.* must decide the difference. *Trin. 9 Jac. 1. B. R. Styl. Rep. 362. 1 Bulst. 174.* But it is agreed, that where there is a neglect or miscarriage in a court-leet, touching the making a constable, there the sessions may interpose and supply it. The lord also may lose his leet by this neglect. *Style 71. Mich. 22 Car. B. R.* And the justices also are to make the high constable of hundreds, where there is not a leet for the hundred that hath constantly done it. *Trin. 9 Jac. 1. B. R.* Constables may make their deputies

Deputies within the statute 7 Jac. 1. c. 5. *Phelp's case, Mich.*

3 Jac. 1. B. R. *Philips con. Winchcomb. Moor, p. 185.*
Bulst. 77.

18. Antiently both high constables and petty constables were appointed and sworn by the sheriff in his turn; and if a constable died, his place was to be supplied by the leet, or justice of peace. But now by the stat. 14 Car. 2. c. 12. in case of the death of constables, or their removal out of the parish, two justices of the peace may swear new ones, they to continue until the next leet, or until the sessions, where the same shall be either approved, or others appointed; and if for want of a leet they hold over a year, they must be discharged, and others put in their places. By the same statute constables, &c. being out of purse, may make rates upon the occupiers of lands, inhabitants and others chargeable; which being confirmed by the justices, may be levied by distress by the warrant of two justices, &c.

Two justices may swear new constables on death or removal of old ones.

19. The constable is an officer of the court of sessions, over whom they have power; therefore if they order him to restore money, plate, &c. which he took as a security from the reputed father of a bastard child, he must obey; and such father, &c. shall not be driven to the expence and delay of bringing his action. *Comber. 204.* A constable may be presented for refusing to be sworn a constable. *Mod. Rep. 24.* One may be indicted, who being chosen constable, and warned before a justice of peace to take his oath, voluntarily neglects or refuseth to take it. *Allen' 78. 1 Roll's Abridgment 591. Moor 845. Cro. Car. 585.* He that is sworn, though hired, is the constable. *1 Sid. 355.* An alderman of London chosen constable at a leet in *Essex*, discharged upon a *certiorari*, because he is bound as alderman to be present in London for the government of the city. *Trin. 16 Car. 1. Jones's Rep. 462. Alderman Adby's case. S. C. Cro. Car. 585. pl. 3.* T. was indicted for not going before a justice of peace to take the oath of an headborough to which he was chosen at a leet, and the indictment was quashed; because he did not appear, that any notice was given him to go before the justice. *Trin. 24 Car. 1. B. R. Style 124. Rex v. Trigg.* When a person is summoned, the summons ought to shew for what cause he is to appear. *Mod. Cases in Law and Equity § 4. The King v. Glegg.* S. was presented at the leet to be a constable, and the steward refused to swear him; upon that, the justices at sessions made an order, that S. should serve the office, and swore him accordingly. On a *certiorari* to remove this order, exception was taken, because the justices had intermeddled with a thing which was not within their cognifance; for 'twas said that the appointment of a constable belongs to the leet, and the lord of the leet (at the peril of the forfeiture of his leet) ought to take care that a constable be there chosen, and that he may

Cases about constables.

may by his steward; but the exception was disallowed by the whole court, for the election of a constable properly belongs to the homage. And although the justices of peace have not originally the making of a constable, yet that is a matter of the peace which is within their jurisdiction, and they may examine this matter in their sessions. And as to the swearing of the constable, any single justice of peace may do that; and the order was confirmed. *Trin. 34. Car. 2. B. R. Jones's Rep. 21. Rex v. Stevens.*

Method of choosing constables in London, &c.

20. But there being some variation in the manner of election and the oath and office of constables in the city of London, with respect to other constables appointed in the country; it may not be improper to mention some things relating to them. And first the city is divided into twenty-six wards, and every ward into the like number of precincts, over each of which is a proper constable. All constables ought to be freemen of the city. They are nominated by the inhabitants of the precinct on St Thomas day, and confirmed, or otherwise, at the court of wardmote; and after they are confirmed, they are sworn in their offices at the court of aldermen on the next Monday after Twelfth-Day. *Cal. Rep. 129.* ●

21. The substance of the oath is as follows:

Their duty and office in London, &c.

TO keep the king's peace to the utmost of their power, arrest affrayers, rioters, and such as make contests to the breach of the peace, and to lead them to the house of correction, or compters of one of the sheriffs; and in case of resistance, to make outcry on them, and pursue them from street to street, and from ward to ward, till they are arrested. To search for common nuisances in their respective wards (being required by scavengers &c.) and upon request to assist the beadle and raker in collecting their salaries and quarteridge; to present to the mayor, and ministers of the city, defaults relating to the ordinances of the city to certify in the mayor's court once a month, the names and surnames of all freemen deceased, and also of the children of such freemen, being orphans.

22. And by the articles of the wardmote inquest, constables are to certify the name, surname, place of dwelling, profession and trade, of every person who shall newly come to inhabit in their precincts, and to keep a roll thereof. In order to this they are to make inquiry at least once a month, what persons are lately come to lodge and sojourn there; and if they find by their own confessions or the aldermens books, that such new comers are ejected from any other ward for bad living, or any misdemeanor, and refuse to find sureties for their good behaviour, warning is to be given to them and their landlords that

they depart; and on refusal they may be imprisoned, and their landlords fined a year's rent agreed for by such new comers. *Calib. Rep. 138.* Constables in each ward are to attend the watch by turns one every night, and to go the rounds, and with the beables every night are to warn such persons as are to serve upon the watch in their several precincts; and if they refuse to appear, the constable may hire others in their stead, and they shall pay the constable according to the custom of the city. The common council appoint the watchmen. They are to certify to the lord mayor and common council of the city, the names of all such persons as shall interrupt or hinder them in the discharge of their offices.

The common council appoint the watchmen.

23. These are the articles of the oath, and extraordinary business of the constables in *London*; to which I am to add, that a constable of *London* has power to execute warrants, &c. throughout the whole city upon occasion: And such as are sworn into the office are obliged to place the king's arms, and the arms of the city over their doors; and if they reside in alleys, at the end of such alleys towards the street, to signify that a constable lives there, and that they may be the more easily found when wanted.

24. *J. S.* living in *London*, and having a place in the Custom-house in *London*, which required his daily attendance there, was chosen constable, and being confirmed at the wardmote inquest refused to be sworn, or to take on him the office; for which being indicted at the sessions, he moved the court of Exchequer for an injunction; and it was granted him, whereby he was, in regard of his daily attendance on the king's business, discharged from all parish and ward offices. *Hil. 3 & 4 W. & M.* And so much for *London* constables.

25. Secondly, We shall next treat of the office and duty of Constables are to constables in general. And I shall first observe, that part of attend assizes and their office consists in attendance on justices of peace, on court-sessions, and on coroners for executing of warrants; they are likewise to attend upon judges of assize at the gaol delivery, justices at the general and special sessions, and other meetings, to execute warrants, and present offences upon oath, according to articles exhibited, &c.

26. And they ought to return the warrants to them directed; Ought to return for a constable was indicted for not returning a warrant to him the warrants directed about deer-stealing, though he is not named in the stat. directed to them. *3 & 4 W. & M. c. 10.* which being removed into *B. R.* by *certiorari*, it was resolved, that constables are subordinate officers to justices, &c. and that where an officer neglects his duty, he is indictable for it at common law; and in this case he ought to return his warrant, or certify what he has done upon it, otherwise the prosecutor cannot have the effect of his prosecution;

Action against a constable.

cution; and that though this indictment concluded *contra pacem* that did not hurt, although this was only a non-feasance.

27. Actions brought against a constable for any thing done in the execution of his office, must be laid in the proper county where the fact is supposed to be done, and he may plead the general issue, and give the special matter in evidence; and if the plaintiff is nonsuited, or discontinued, or a verdict for the defendant, he shall have double costs. 7 Jac. 1. c. 5. 21 Jac. 1. c. 12. *Style* 593. By the stat. 24 Geo. 2. c. 44. no action shall be brought against any constable, or other officer, or any person acting by his order, and in his aid, for any thing done in obedience to any warrant of a justice of peace, until demand has been made, or left at the usual place of his abode, by the party intending to bring such action, or his attorney or agent, in writing, signed by the party demanding the same, of the personal and copy of such warrant, and the same hath been refused or neglected by the space of six days after such demand; and in case after such demand and compliance therewith, by shewing the said warrant to, and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such constable or other officer, or such person acting in his aid, for any such cause as aforesaid, without making the justice who signed or sealed the said warrant a defendant; then on producing and proving such warrant at the trial, the jury shall give a verdict for the defendant, notwithstanding any defect of jurisdiction in such justice; and if such action be brought jointly against such justice, and also against such constable or other officer, or other person acting in his aid, then on proof of such warrant, the jury shall find for such constable or other officer, and other person so acting, notwithstanding such defect of jurisdiction as aforesaid: And if the verdict shall be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner as to include such costs as such plaintiff shall be liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid. No action shall be brought against any constable, or other officer, or other person acting as aforesaid, unless commenced within six calendar months after the act committed.

28. If any one abuse or affront a constable in the execution of his office, either by word or action, he may have him bound to the good behaviour for such his offence, and fined before the justices in their sessions, as they see fit upon proof. *Fitz.* 207. *Crompton* 135. Constables or other officers may lay no hands on two intending to fight till weapons are drawn, or an assault made. *Lamb.* 132. Constable hurt in parting an affray, may have an action against the affrayer; so may any other officer; but the affrayer can have none against them. *Lamb. ibid.* Constable or officer presented at sessions for not endeavouring to part an

chap. 61.

affray, being present, shall be heavily fined. *Lamb. ibid.* A constable was bound to his good behaviour for arresting one on Sunday in the church-yard, after a *certiorari* out of the King's Bench shewn to him. 1 *Cro.* 603. A constable was indicted for refusing to pursue hue and cry for a burglary. *Cro. El.* 654. *powder's case.*

29. By stat. 22 *Car.* 2. c. 8. constable is to search if any use any measures but *Winchester*; and if he finds any un-
 20. A constable hath no authority to commit any person to prison before he carries him before a justice of peace, unless for breach of the peace done in his presence. *Savil's Rep.* 98. B. R. ordered an action to be brought against a constable for committing one to the compters without a cause. Several constables and parish officers, who had refused to give accounts upon oath of the names of the inhabitants, house-keepers and inmates in their several parishes, were fined and fined 100*l.* apiece, 8 *Sept.* 1684. A constable has power thro' the whole parish and division, 18 *Car.* 2. the case of the inhabitants of *Shadwell*.

30. A constable cannot justify the breaking of any man's house in the night time, unless it be in the case of felony. *Bulst.* 146. 5 *Co.* 92. *Seyman's case.* If a constable takes a man that dangerously wounds another, and suffers him to escape, and then the party wounded dieth; if it be voluntary, it is felony in the constable; if negligent only, yet will he be at least heavily fined. 11 *H.* 4. A constable may break open a door to take an offender, where a felony is committed, or dangerous wound given. *H. P. C.* 93. If there be an actual breach of the peace, the constable may imprison the party in the stocks, the gaol, or in his house, till he can bring him before a justice of the peace. *H. P. C.* 92. A constable was indicted for refusing to execute a justice of peace his warrant to apprehend one for a contempt. *Hil.* 16 *Jac.* 1. 2 *Roll. Rep. f.* 78. The high constable of the hundred of *Wanstead* was discharged from being collector of money for the poor of the parish of *St. Peter* *London*, during his office of constable. *Jones's Rep.* 46. *Feb.* 28 *Car.* 2. B. R.

Where the voluntary escape is felony in a constable.

31. In cases of treason, felony, or breach of the peace, a constable by warrant from a justice of peace may break open a house to apprehend the criminal; but he ought first to require opening the doors, and to inform the person for what purpose he came thither; and he may justify the detaining of an offender for a day without warrant, by the command of a justice of peace; and in conveying a felon either before a justice or to the gaol, he may lock him in the stocks, if unruly, to prevent his escape. *Dalt.* 204, 342.

In what cases a constable may justify the breaking open doors, &c.

32. If a constable arrests a felon, and carries him to the county gaol, but the gaoler refuses the prisoner, the constable must not let

let him go ; if he does, it is an escape ; adjudged *Hil. 10 H.*
A constable may commit one for breach of the peace in his
presence, without carrying him before a justice ; and he may
take up suspected persons who walk in the night, or keep suspicious
company. *Savil 98. 13 H. 7.*

A constable
must not dispute
but execute a
justice's warrant,
unless, &c.

33. A constable must not dispute any warrant sent to him
by a justice, but must execute the same ; and if the justice ex-
ceeds his authority, generally the constable is excused ; but if a justice
of peace send his warrant to be executed where he hath no
jurisdiction, or in a matter wherein he is no legal judge ; if
the constable execute it, he may be punished. And so it is where
the warrant is mistaken in the penalty, or commands the constable
to act out of his precinct. *Dalt. 437.* But see *sect. 27.*

The penalty of
abusing or con-
temning a ju-
stice's warrant,
&c.

34. A man may be bound to the good behaviour for
abuse or contempt to the justice's warrant, and be indicted
and fined for it. And a constable need not shew his warrant ;
if he acquaint the party with the contents of it, it is sufficient
but let him take care how he apprehends a person without
warrant ; for if he does, it will be false imprisonment, though
he obtained one afterwards. *Co. 69. Cromp. 149.*

Where an action
of false impris-
onment lies
against a constable,
&c.

35. If it happen that there are two persons of one name,
and the same addition, and the constable takes the wrong person,
there is no false imprisonment ; but if the warrant be against a particular
person by name, not the offender, and he apprehends another
who is really the offender, such taking is wrongful, and the
party may have his action of false imprisonment, but he can
recover but little damages. *Dyer 244.* Where a constable has
a warrant to execute for sureties of the peace, and afterwards
receives a *superfedeas* from the court of Chancery, or from
another justice, to discharge the sureties ; if he still insists upon
the party's finding sureties, and he refuses, whereby he is detained,
it is false imprisonment.

36. Constables are to cause night-watches to be set, where
such watches are to be composed of the inhabitants of the parish,
to watch from sun-set to sun-rising ; and if such persons refuse,
they may be bound to the good behaviour by a justice, on com-
plaint of the constable. *13 Ed. 1.* These watchmen are to
apprehend night-walkers, suspected persons, arrest strangers, &c.

A constable may
sell offender's
goods to pay for
carrying him to
gaol.

37. A constable, by warrant from a justice of peace, may
take the goods of an offender apprehended, to discharge the expence
of carrying him to prison, such goods being first appraised by
some inhabitants of the place. *3 Jac. 1. c. 10.* And if the
offender hath no goods, then the town where he was apprehended
must be at this expence, and the constable, with three or
four of the principal inhabitants, may impose a tax on every
inhabitant according to his estate in lands, and after the rate
of 5 *l.* for every hundred pounds of the personal estate of a trades-
man ; which being allowed by a justice, the constable, by warrant,

may levy it on those who refuse; and if the inhabitants refuse to make a tax, two justices may by warrant compel them to it. 3 Jac. 1. c. 10. Where any person not having goods or money within the county where he is taken, sufficient to bear the charges of himself, and of those who convey him, is committed to gaol or the house of correction, by warrant of any justice of peace, then on application by any constable, or other officer, who conveyed him, the justice shall on oath examine him, and ascertain the reasonable expences, and by warrant order the overseers of the poor, if in *Middlesex*, but in any other county the treasurer of the county, to pay the same. Stat. 27

Gen. 2. c. 3.

38. In false imprisonment the defendant justified that the plaintiff being in presence of a justice of peace, the justice not having opportunity to examine him, commanded the defendant to take him into custody, and keep him safely till next day; the which he being constable did accordingly: And this was held a good justification, without shewing what cause the justice had to imprison him, and without shewing the warrant, because it was done in the presence of a justice of peace. *Broughton v. Mul-
ter, Trin. 37 El. Moore's Rep. 401.*

39. The constable is the proper officer to whom a warrant is to be directed; but a justice may direct it to the sheriff, constable, or other officer; and in some cases (by particular directions of the statute) to the churchwardens and overseers, &c. or to any other indifferent person by name, tho' he be no officer: But there is this difference in the execution of it, that if it be executed by a sworn officer, he need not shew his warrant to the person upon whom he serves it, though he ought to declare the contents thereof; and if executed by a private person, it must be produced if demanded, or else the party may make resistance, and need not obey it. *Br. Faux Impr. 23.* If a statute directs anything to be done by a constable, that will give him a jurisdiction over the limits of his parish. So if a justice of peace directs his warrant to a particular constable, he may execute it out of his parish; but where a warrant is directed generally, to all constables, &c. it shall be taken respectively to each of them within their several districts, and not to the constable of one parish to take a distress in another parish. By *Holt, C. J. Rex Chandler, 1 Ld. Raym. 546.*

40. A warrant directed by the justices of peace to the sheriff, may by word command his under-sheriff, bailiff, servant, or other known or sworn officer, to serve it without any precept in writing. *Br. Faux Impr. 23.* But if the sheriff will command another man, who is a stranger, to serve it, he must deliver him a precept in writing; otherwise false imprisonment will lie for the arrest. *Ibid.*

A justification of a constable, &c.

Constable is the proper officer to whom a justice's warrant is to be directed.

Where a person must serve the warrant in person, &c.

In what cases one ought to obey an arrest, &c. and when not.

When an officer can retake his prisoner, and when not.

In what cases a constable is excused in obeying a justice's warrant, and in what not.

41. A warrant directed by a justice of peace to any person but the sheriff, he to whom it is directed must serve it himself for he can command no other to do it, neither by word nor writing, nor make any deputy. *Dalt.* 578. c. 169. The officer to whom the warrant is directed and delivered, ought with all speed and secrecy to find out the party, and execute the warrant; and if it be a warrant for the peace or good behavior or in any case where the king is party, the officer may break open doors to take the offenders; and if resisted or assaulted he may justify the beating and wounding, &c.

42. If any person says, *I arrest you in the king's name*, you ought to obey, though you know not whether he be an officer or no; and if it appears afterwards that he was no officer, an action of false imprisonment lies against him; but you certainly know that the person is no officer, you are obliged to obey. *Co. 9 Rep.* 69.

43. Where a warrant is granted to take R. G. the son of J. G. and the officer arrests R. G. the son of W. G. though he is the offender, yet it is false imprisonment. *Dyer* 244.

44. If an officer arrest a person for the peace, &c. with a warrant, and afterwards he receives a warrant, yet this arrest is wrongful, and false imprisonment in the officer. *Ibid.*

45. If after an officer hath arrested a person, he shall suffer the person to go at large upon promise to return or appear, though he makes default in his appearance, yet the officer cannot retake him by virtue of his first warrant, because it was executed, and his going at large was with the consent of the officer; but if the party makes his escape without the consent of the officer, then upon fresh suit the officer may take him again, so often as he escapeth, altho' he were out of view or that he fly into another town or county. *Co.* 58, 144.

46. Where an officer has received a warrant, he is bound to pursue the effect of it in every behalf, or otherwise his warrant will not excuse for that which he does otherwise.

47. If a justice of peace exceeds his authority in granting a warrant, yet the officer must execute it, and is indemnified for doing; but if it be in a case where he has no jurisdiction, or a matter whereof he has no conscience, the officer ought not to execute such warrant; for if he does, he may be punished if a poor's rate is illegally assessed, and afterwards levied by warrant from the justice, &c. this will not excuse the churchwardens. *Gro. Car.* 394. 10 *Co.* 76. And so note, that the officer is bound to take notice of the authority and jurisdiction of the judge. See *section* 27.

48. If a man shall abuse the justice of peace his warrant by throwing it into the dirt, or treading it under his feet, or shall refuse to execute it, it shall be adjudged a contempt.

the king's process, for which the offender may be bound to his good behaviour, and may also be indicted and fined. *Crompt.*

49. Upon a warrant for the peace, the officer ought first to require the party to go before the justice before he does arrest him. *Dalt.* 580. c. 170. If the warrant is general, viz. to be brought before the justice who grants it, or any other justice, &c. the constable, who is the officer and minister of justice, may carry the party before any justice of that county, &c. because he is presumed to be an indifferent person, and sworn to execute his office duly; and therefore it is reasonable that the election should be in him. 5 *Rep.* 49. *Foster's case.* But if the warrant be to bring the party before the same justice of peace that made it, in this case the officer must bring him before the same justice, and cannot bring him before any other.

When a constable may choose what justice he will go before, and when not,

50. A *mittimus* must not always conclude (until he be discharged by due course of law); for offences at the common law may be right to conclude so; but where it is for an offence created by a particular statute, it ought to conclude according to the direction of that statute.

How a mittimus ought to conclude, &c.

51. Where sureties are to be required, the warrant ought to contain the special cause whereupon it is granted. *Palm.* 558. A warrant for treason, murder or felony, or other capital offence, need not contain the special cause. 1 *Cro.* 148.

52. All warrants made in the king's name ought to be directed to all ministers as well within liberties as without. *Dalt.* 555. A justice is at liberty to direct his warrant to the sheriff, his warrants.

all high constables, petty constables, &c. in the county in general, or to any one in particular, unless the statute doth appoint him to whom to direct his warrant, as several acts of parliament do: Some of them appointing him to direct his warrant to the constables, some to the constables and churchwardens, some to the churchwardens and overseers of the poor; and it is not safe for the justice of peace to vary from it.

53. Though for treason, felony, &c. it is not necessary to mention the crime, yet it is best to express the cause; otherwise, if the prisoner escape, it is no offence; but if the cause be set forth to be for felony, &c. then a voluntary escape will be felony in the officer, though the prisoner be not guilty of the felony, &c.

54. Every justice of peace may cause the watch to be set and duly kept, and may direct the manner of it; but no man is compellable to watch, unless he is an inhabitant of the town.

Any suspected person passing by the watch at unreasonable hours may be examined by the watchmen; and if they find cause of suspicion, or if he refuse to answer, they may justify the apprehending him and securing him till the morning; and if he will not obey the arrest of the watchmen, they may levy hue and cry, Constable's duty of about the watch.

or else they may justify the beating him, or they may carry him to the constable, who may carry him before a justice of peace as they see cause, by him to be examined, and be bound over or committed, until the offender be acquitted in due manner.

55. In an action of false imprisonment, the defendant justified, because at that time he was constable of *D.* and appointed the plaintiff to watch, and he refused; for which he set him in the stocks. Upon a demurrer, it was said by *Wray*, chief justice, that the defendant ought to shew that the plaintiff was an inhabitant in the town, and that it was his turn to watch, and if such inhabitant refuse to watch in his turn, the constable may set him in the stocks, *Trin. 30 El. B. R. Leon. Rep. Pt. p. 208. pl. 271. Stretton and Brown's case. Cro. El. p. 20 S. C.* and saith it was adjudged for the plaintiff, because the defendant did not shew that the plaintiff was an inhabitant there, and the constable cannot appoint a stranger to watch, neither by the statute of *Winchester*, 13 E. 1. c. 4. nor by *stat. 5 H. c. 3.* In the same case these points were resolved; 1. That a man is compellable to watch, unless he be an inhabitant within the same town. 2. That such as are inhabitants within the town, are not compellable to watch at the will of the constable, but only when their turn comes; for the statute of *Winchester* says, that watches shall be kept as hath been used in times past, which is commonly by turn, or by the house.

Points resolved
in *Stretton and
Brown's case.*

56. If a person who ought to watch, and is commanded by the constable so to do, refuses, it is doubted, whether he may put him in the stocks; it is safer for him to complain to a justice of peace, who may bind the offender over to his good behaviour, and so over to the sessions, or the constable may present him there, or at the assizes. Watching is properly intended of the night, and warding for the day-time.

57. By *stat. 5 Ann. c. 31.* a certificate under the hand and seal of two justices of peace, that a watchman or other person was killed in endeavouring to take a burglar or housebreaker, intitles his executor or administrator to 40*l.*

Certificate of
watchman killed,
intitles his
executor to 40*l.*

58. *Term Mich. 16 Car. 2. B. R.* it was ordered by the court that as well in the summer as in the winter, watch and ward should be kept in the night in every street throughout *Westminster*, and the suburbs of *London*, and they directed their order to the justices of peace and the sheriff, and charged the sheriff with it in court. And the chief justice said that a rate should be made that every one who inhabits there should contribute so much to such charge. 1 *Sid. Rep. p. 218.* By *stat. 5 H. 4 cap. 3.* watches shall be kept upon the sea coasts as they were wont to be. By the several statutes following, watches are regulated in the places after-mentioned, viz. By 8 G. 2. c. 15 in the parish of *St. James Westminster* and *St. George Hanover Square.* By 9 G. 2. c. 3. in the parish of *St. Martin in the Fields.*

Order of B. R.

Fields. By 9 G. 2. c. 13. in the parish of *St. Paul, Covent-Garden*. 9 G. 2. c. 17. in the parishes of *St. Margaret* and *St. John Westminster*. And by 9 G. 2. c. 19. in the parish of *St. Anne Westminster*. See below, §. 65. and by 10 G. 2. c. 25. in *Hatfield Garden*. And by 11 G. 2. c. 35. in the parish of *Christ Church, Middlesex*.

59. And in every commission of the peace this article should be inserted, *viz.* that the justices of peace shall have power in their sessions to enquire of watches, and to punish them who shall be found in default, according to the tenor of the said statute. The watch ought to be from *Ascension* to *Michaelmas* from sun to sun, and the warding then of course must be the best of the twenty-four hours; and for default of this watch and ward the township may be punished.

60. An indictment against a woman, for that being *debito* *Indictment* *requisita ad vigilandum non vigilavit*, was quashed, be- against a woman, cause it is not said, nor procured one to watch for her, which she might have done. *Comb.* 243. Indictment of one Good for not assisting to watch. *Black.* 305.

61. A constable, tithingman, &c. generally in the execution of their offices (when need shall be) may require the aid and assistance of so many of their neighbours, or others of all sorts of able men above fifteen years of age, as they shall think meet; and if any such person being required by any of these officers in any such case shall refuse or neglect to aid them, he may be fined and imprisoned for it at the quarter-sessions. Constable, &c. may require others to aid and assist him, &c.

62. By *stat.* 7 *Jac.* 1. c. 5. and 21 *Jac.* 1. c. 12. it is enacted, that if any action, bill or suit, &c. shall be brought against any justice of peace, constable, tithingman, churchwarden, overseer for the poor, and other officers there particularly named, or any of their assistants, for any thing done by them, or any of them, by virtue of their or any of their offices, or by any persons in their aid and assistance, or by their command; 1. Every such action or suit shall be laid within the county where the fact shall be done and committed, and not elsewhere. 2. That all such officers and their assistants may plead the general issue, *Not Guilty*, to all such actions, and give the special matter in evidence. 3. That in all such cases where the verdict passes for the defendant, or the plaintiff is nonsuit, or discontinues his suit, these officers shall have double costs, to be recovered as other defendants have their usual costs. See *section* 27. Constable, &c. sued, may plead *Not guilty*, &c.

63. Constables and churchwardens are to levy, by distress and sale, all monies rated on any person within their liberty, for relief of poor maimed soldiers and mariners, and pay it to the high constable, or they forfeit twenty shillings. In the same manner they are to levy what is rated on any for the relief of the prisoners in the *King's Bench* and *Marshalsea*, or for the suc- What money constables are to levy, &c.

cour of hospitals and alms-houses, and pay it to the high constable, on pain of ten shillings.

64. Four justices are authorized to allow a tax for repair of any decayed bridges in the highway, which must be assessed by the constable, and two of the more sufficient inhabitants in the parish.

65. By *stat. 10 G. 2. c. 22.* the mayor, aldermen, and common council of *London*; are, yearly between the first of *October* and twentieth of *November*, to appoint what number of watchmen and beadies they judge proper within each ward for one year, commencing from the twenty-fifth day of *December* the ensuing, and how to be armed, and how long to watch, and what wages, and how many constables to attend every night, and shall make orders and regulations; and shall direct what sums shall be raised on each ward, and direct the aldermen, deputy, and common council-men of each ward, or the major part of them, to make an equal rate upon every occupier, (regard being had to the abilities and rent paid;) and such rates are to be collected quarterly, by the constables of the precincts or beadies of each ward, as the aldermen, &c. shall direct: On neglect or refusal, to be levied by warrant of lord mayor or alderman of the ward, (on oath by such collector of such refusal or neglect) by distress and sale, &c. and for want of distress, to commit the party to the compters for a month, or until payment. Appeal lies within twenty days after demand, to court of lord mayor and aldermen.

66. The aldermen, &c. or major part, whereof alderman or deputy to be one, within fourteen days after appointment of number of watchmen shall meet and nominate honest and able bodied watchmen; and order in writing at what stands to be placed, and in what manner, and how often to go their rounds, and then make orders. And on death of watchman, or neglect or misbehaviour, or if necessary to alter any nomination, order &c. may at any intermediate times of the year remove, nominate, &c. so as their orders be not repugnant to those of mayor, aldermen and common council.

67. A true copy of all such orders and regulations, fairly written and signed by the alderman, or his deputy, and the majority of common council-men of the ward shall be given to every constable. One or more of whom is to attend by turns every night and keep watch and ward, from tenth of *September* [to tenth of *March* from nine in the evening till seven next morning, and from tenth of *March* till tenth of *September* from ten in the evening till five the next morning; and shall use their best endeavours to prevent fires, murders, burglaries, robberies, and other outrages and disorders; and to that end shall arrest all nightwalkers, malefactors and suspected persons, who shall be found wandering or misbehaving themselves; and shall carry them, as soon as convenient

may be, before a justice of peace; and shall twice or oftner, at convenient times every night, go about their wards, and take notice whether the watchmen perform their duties, and give notice of neglect or misbehaviour to the alderman or his deputy.

68. Constables wilfully neglecting to attend any night in their turn, to keep watch and ward, &c. or not coming at the hours appointed by the act, or departing during the hours, or neglecting to go about the ward twice in a night, or otherwise misbehaving themselves, forfeit twenty shillings for each offence.

69. Watchmen, in the constable's absence, are also to apprehend malefactors, &c. and persons whom they shall have just cause to suspect of any evil design, and deliver them to the constable of the night, as soon as conveniently may be, who is to carry them before a justice or justices. *Ibid.*

70. Persons appointed collectors, refusing to execute the office, forfeit ten pounds, and continue liable to be appointed the year following, and to the penalties for refusal. Upon such refusal or death, the alderman, &c. or the major part of them, may appoint others; who upon refusal shall be liable to the penalties of constables and beadles refusing. *Ibid.*

71. The collectors are to collect the rates quarterly, and keep books, &c. and pay the money to the deputy; so as never to have above five pounds in their hands at once, during five days, on penalty of forty shillings. The deputies are to give receipts, &c. to the collectors, to be allowed in their discharge by the alderman yearly. The collectors are also, within twenty days after the end of every three months, to deliver to the alderman, or person appointed by him, their book, &c. and an account of persons neglecting or refusing to pay. And freemen neglecting or refusing, or desiring to be excused, are incapable of voting, &c.

72. The lord mayor, or any two justices, may hear and determine the offences subject to pecuniary penalties, and levy them by distress and sale, if not redeemed in five days: And for want of distress, to commit to hard labour not exceeding three months, or till the penalty is paid; but they may compound or mitigate, not lower than to a moiety. But an appeal lies from their judgment to the next quarter sessions. The penalties to go, a moiety to the informer, the other moiety to the alderman, to be applied to the expences of the nightly watch. *Ibid.*

73. Deficiency in rates shall be paid out of the next year's rate: And surplus-money shall be carried on to the credit of the next year's account. *Ibid.*

74. Where houses are let into tenements to three or more tenants, the landlord may be rated, and it may be levied on any occupier; and occupier paying shall be allowed it in his rent by the landlord. *Ibid.*

75. Persons paying their rates are not liable to watch or ward by virtue of any other statute. *Ibid.*

CHAP. LXII.

Of the Duty of High Constables alone.

1. **T**HEY may determine complaints of clothiers, and their spinners, and other labourers, by virtue of an old statute relating to not paying wages in ready money, &c. which incurs a forfeiture of three times the value of the wages, and on nonpayment of the forfeiture, &c. they may commit the party till paid. *Stat. 4 Ed. 4. c. 1.*

2. An high constable may enter into any place to search for tenters, ropes, &c. for stretching of cloth; and if he finds any, he is to deface them; and if the owners shall afterwards make use of them, such high constable has power to seize and sell them, and distribute the money to the poor. *Stat. 39 El. c. 20.* Persons resisting the constable forfeit 10*l.*

3. High constables on their receiving monies from churchwardens, assessed on any parish for relief of poor prisoners, are to pay over the same to the collectors appointed by the justices at their quarter sessions, on the penalty of 5*l.* *Stat. 14 El. c. 5.*

4. They are also to pay over monies received for the relief of prisoners in the *King's Bench* and *Marshalsea*, under the penalty of 20*s.* and so of money received for the relief of maimed soldiers and mariners, on pain of 40*s.* *Stat. 43 El. c. 2.*

5. Chief constables are to pay petty constables the allowances ascertained in certificates made by justices for passing of vagrants, and no more, taking the certificates, and their receipts; which certificates and receipts are to be allowed the chief constable in his account by the treasurer of the county. *Stat. 12 Ann. c. 23.* But see *Ch. XXXIII.* and *Ch. XCI. s. 19.*

6. High constables are likewise to pay monies rated at *Easter* sessions for the use of the poor, to the treasurers, under the penalty of 20*s.* by *Stat. 43 El. c. 2.*

7. High constables paying money for passing of vagrants without the petty constables producing a receipt for such vagrants, to forfeit 20*s.* *Stat. 1 Ann. s. 2. c. 13.*

8. High constables are to issue precepts to petty constables, to prepare lists of jurors, to make presentments of offences, and levy gaol money, &c.

Duty and powers
&c. of high
constables.

9. The high constable, when established in his office, has the direction of the petty constables, headboroughs and tithing men within

within his hundred, and his duty in general in few words is to keep the peace, and to apprehend felons, rioters, &c. to make hue and cry after felons, and take care that the watch be duly kept in his hundred, and that the statutes for punishing rogues and vagrants be put in execution. He ought to present unlawful gaming, tippling and drunkenness, bloodshed, affrays, re-
fractants, profane swearers, &c. He is to execute precepts and warrants directed to him by justices of peace, and make returns at the sessions of the justices to all the articles concerning his office; and he is to issue his precepts to the petty constables, to make presentments of offences, and cause them to make their returns; also to prepare lists of jurors, levy gaol money, &c. He is to return all victuallers, and alehouse-keepers that are unlicensed, and such as keep unlawful gaming houses, and gamesters, and such persons as entertain inmates likely to become chargeable to parishes. He must likewise present such as refuse to watch, and the faults of petty constables, headboroughs, &c. who neglect to apprehend rogues, vagrants, and idle persons, whores, night-walkers, mothers of bastard children, who are likely to be a charge to their parishes, &c. and also all defects of highways and bridges, and the names of those who ought to repair them; scavengers who neglect their duty, and those who neglect to pave their doors, &c. and all common nuisances in streets and ways; bakers who sell bread under weight, brewers selling beer to unlicensed alehouses, forestallers, ingrossers, retailers, &c. And at every quarter-sessions, high constables are to pay the treasurer of the county all such money as hath been levied and received by them of the churchwardens of parishes, for the relief of poor in prisons and hospitals, &c. Also they are to pay petty constables allowances for passing vagrants, taking the certificates and their receipts, which shall be allowed by the treasurer of the county. *Dalt. c. 28. Lamb. 125. Stat.*

G. 2. c. 24.

10. The duty and authority in general of petty constables in their several towns, tithings, &c. is much the same as the high constable hath in his hundred; they are to keep the peace, and conservators thereof they may command affrayers to depart, &c. and may break into a house to see peace kept, make fresh pursuit into another county, &c. They may also command all persons to assist them to prevent a breach of the peace, justify one another if assaulted; and if they happen to be killed doing their duty, it will be murder. They may without warrant from a justice take into custody any persons whom they see committing a felony or breach of the peace. But they are to have a justice's warrant, if it be not in view; and a constable cannot detain a man at his pleasure, but only stay him to bring him before a justice to be examined and committed, &c.

11. They

11. They must assist the high constable in making presentations at the assizes and quarter-sessions of every thing that amiss. And part of their office consists in attendance upon judges of assize, justices of peace, at their general and special sessions, and other meetings, to execute warrants and process for offences, and they are to attend at courts-leet, and on coroners for executing warrants, &c. *Dalt. c. 1. § 8. Lamb. 12 H. P. C. 93, 135.*

Of petty constables in London, &c.

12. And constables of London in every ward are obliged to attend the watch by turns, to go the rounds, and with the beadle warn such as are fit to serve on the watch in their several parishes, and they shall be aiding and assisting to the watchmen who must obey their orders, &c.

C H A P. LXIII.

Of those Parts of a Constable's Duty which relate to Parish Business.

1. **T**HUS having treated of the power and duty of constables in general, I shall proceed to treat of the duty of constables in particular; but first I shall give you his oath till which is administered he is not properly in his office.

The Oath of a Constable.

Constable's oath, 2. &c.

YOU shall well and truly serve our sovereign lord King George, and the lord of the leet (if sworn in a court-leet) in the office of a constable in and for the hundred of A. or parish of, &c. for the year ensuing, or until you shall be thereof discharged according to due course of law; you shall well and truly do and execute all things belonging to the said office, according to the best of your knowledge.

So help you God

3. This oath is now administered for the shortness of it; but the oath which was formerly given him was very long, and related to several articles, many of which are foreign to our present purpose; I shall therefore mention only those which relate chiefly to parish business, which are as follow; and of which I shall treat in few words, and in alphabetical order.

<i>Alehouses,</i>	<i>Ministers disturbed,</i>
<i>Bastardy,</i>	<i>Presentments,</i>
<i>Barndy-houses,</i>	<i>Prisoners and Prisons,</i>
<i>Bridges,</i>	<i>Recusants,</i>
<i>Carriages,</i>	<i>Robbery,</i>
<i>Cattle,</i>	<i>Servants,</i>
<i>Conventicles,</i>	<i>Soldiers,</i>
<i>Distresses,</i>	<i>Sundays,</i>
<i>Drunkenness,</i>	<i>Supersedeas,</i>
<i>Escapes,</i>	<i>Swearing,</i>
<i>Highways,</i>	<i>Tithes,</i>
<i>Hue and Cry,</i>	<i>Vagrants,</i>
<i>Inns,</i>	<i>Warrants,</i>
<i>Juries,</i>	<i>Watches,</i>
<i>Lamps,</i>	<i>Weights and Measures.</i>
<i>Land-Tax,</i>	

CHAP. LXIV.

Alehouses.

IF the constable doth not levy 20 s. to the use of the poor, Petty constables upon such who keep unlicensed alehouses, which distress duty about ale-
he may sell after three days; and if no distress, then if he do houses.
not whip the offender, one justice may commit the constable
without bail, until the alehouse-keeper is punished, or until the
constable pay 40 s. to the use of the poor. By the *stat. 26 G.*
2. c. 31. constables by the order of the high constable, are to
give notice to the several inn-keepers and alehouse-keepers
within their respective constablewicks, of the day and place ap-
pointed by the justices for granting licences.

A Warrant to levy 20 s. on the first Conviction,
for selling Ale without a Licence.

To the constables and churchwardens of the parish of
within the liberty of *Westminster*,
and to each and every of them.

2. Westm. ff. **W** Hereas of the parish of
victualler, was this day
lawfully convicted before me, one of his majesty's justices of the
peace for the city and liberty of Westminster, for keeping a com-
mon alehouse in the said street and parish, and selling of beer, ale,
and

and other liquors therein, not being thereunto lawfully licensed according to the form of the statute in that case made and provided by reason whereof, and for which offence, he the said

has been duly summoned before me, to shew cause why he should not be convicted for his said offence, and hath not appeared or shewn sufficient cause: These are therefore in his majesty's name to require you, or one of you, forthwith to levy the said sum of twenty shillings by distress and sale of the goods and chattels of the said

and in default of payment of the said sum of twenty shillings within three days after such distress taken, that then you appraise and sell the same, to satisfy the said forfeiture, rendering to the said the overplus (if any there be); and if no such distress can be had or taken, that then you certify the same to me, to the end I may further proceed as to law doth appertain; and hereof fail not. Given under my hand and seal the

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3. He is to levy the penalty on alehouse-keepers selling less than measure, &c. or forfeit 40 s. to be levied by warrant from one justice; and if no distress, to be committed; and not levying penalty for tippling, forfeits 10 s. 1 Jac. 1. c. 9. 21 Jac. 1. c. 7. 1 Car. 1. c. 14. 11 & 12 W. 3. c. 15.

4. Upon those convicted of drunkenness he must levy 5 s. for the poor; if the party is not able to pay it, he must sit in the stocks six hours, &c.

5. Not delivering the poor's moiety of the penalty of 6 s. 8 d. per barrel, for selling ale to an unlicensed alehouse-keeper, over to the churchwardens, &c. and they not distributing it among the poor, forfeit double the value. 4 Jac. 1. c. 4. But in all these cases there must be a justice's warrant.

6. If a common inn-keeper or alehouse-keeper refuseth to lodge a traveller, he profering to pay ready money for his victuals, &c. the constable may cause such an inn-keeper or alehouse-keeper to be indicted at the sessions or assizes, where he may be fined and imprisoned, or the party grieved may have his action on the case against the inn-keeper or alehouse-keeper; but they are not bound to lodge or find victuals without ready money tendered, or paid, if required. And in the condition of the recognizance, which every alehouse-keeper enters into, that is licensed to sell drink, it is one clause, that he shall keep one or more spare beds for lodging of strangers.

C H A P. LXV.

Bastardy.

A Constable may put a person in the stocks leaving a child in a parish, and not carrying it away being required, until such time as he shall take up the infant. *Pop. Rep. 12.* About bastardy.

C H A P. LXVI.

Bawdy-Houses.

A Constable having information that persons resort to a common bawdy-house, and there keep company with lewd women, may, with others called to his assistance, enter such house, and arrest the offenders for a breach of the peace. *Mich. 13 Hen. 7.* But he must find them in company with lewd women, and he is to carry them before a justice of the peace, which he may do without a warrant. *Dalt. 214, 469.* If any two inhabitants of any parish or place, paying scot, and bearing lot therein, do give notice in writing to any constable or other officer of the like nature, where there is no constable) of such parish or place, of any person keeping a bawdy-house, gaming house, or any other disorderly house, in such a parish or place, the constable or such officer as aforesaid, so receiving such notice, shall forthwith go with such inhabitants to a justice of peace of the county, &c.—where such parish or place does lie; and shall, upon such inhabitants making oath before such justice, that they do believe the contents of such notice to be true, and entering into a recognizance of 20*l.* each to give or produce material evidence against such person for such offence, enter into a recognizance in 30*l.* to prosecute with effect such person for such offence, at the next general or quarter-sessions of the peace, or next assizes for the county, in which such parish or place does lie, as to the said justice shall seem meet. And such constable, or other officer shall be allowed all reasonable expences of such prosecution, to be ascertained by two justices, and be paid the same by the overseers of the poor of such parish or place. And if such person shall be convicted of such offence, the overseers shall pay 10*l.* to each of such inhabitants. Overseers neglecting or refusing to pay such expences, or the said sums of 10*l.* and 10*l.* shall forfeit double the sum refused

About bawdy houses.

or neglected to be paid. Upon the constable or other officer entering into such recognizance, the justice shall make out a warrant to bring the person accused before him, and bind him over to answer such indictment as shall be found against him; and the justice may, if he thinks fit, take security for such person's good behaviour in the mean time. Constable neglecting to do as above directed forfeits 20*l.* to each such inhabitant. Any person appearing as master or mistress, or as having the care or management of any bawdy-house, gaming-house, or other disorderly house, shall be liable to be punished as such notwithstanding he or she be not in fact the real owner or keeper thereof; any person may be a witness in such prosecution, notwithstanding his being an inhabitant of such parish or place, or having entered into such recognizance as aforesaid. No such indictment shall be removed by *certiorari*. Stat. 25 G. 2. c. 36. A constable may by warrant of a justice of peace enter into unlicensed houses, or places kept for publick dancing, music, or other entertainments, and seize every person found therein, in order to be dealt with according to law. Stat. 2 Geo. 2. c. 36.

C H A P. LXVII.

Bridges.

About bridges.

1. **C**onstables and two of the most able inhabitants in every parish are to make an assessment for the repairs of bridges, where a common bridge is in decay, and it cannot be known who or what lands ought to repair it; and four justices are to allow the assessment; and money assessed is to be levied by distress by constables, &c. Stat. 22 Hen. 8. c. 5. 1 Ann. c. 18.

C H A P. LXVIII.

Carriages.

About carriages.

1. **T**HE constables shall provide carriages on the marching of soldiers, by virtue of a justice of peace his warrant, being allowed by the officers for a waggon and five horses 1*s.* a mile; and for a cart and four horses 9*d.* per mile; and for a waggon

Waggon shall be obliged to carry above twenty hundred weight ;
 officers forcing a carriage to travel more than one day shall forfeit 5 l. And constables neglecting their duty, or any persons hindering them, are liable to a forfeiture not exceeding 40 s. or less than 20 s. Stat. 6 Geo. 2. c. 3.

2. Horses of carriers and waggoners having above their number allowed by law, which may be seized as forfeited, are to be delivered to constables, &c. and by them re-delivered, on conviction of the offender before a justice. 1 G. 1. c. 10.

CHAP. LXIX.

Cattle.

1. **C**onstables and tithingmen, &c. or any other persons, About cattle.
 may seize cattle brought from *Ireland*, or other parts beyond the seas, and cause them to be killed in six days after conviction, and the hides and tallow shall be to the seizer, and the remainder to be distributed among the poor of the parish where imported or found. And constables, or others seizing, not giving notice to churchwardens and overseers of the poor of the seizure, and they not distributing the poor's part, shall forfeit 40 s. for every one of the great cattle, and 13 s. for every sheep or swine ; one moiety to the poor, the other to the informer, or be committed to gaol for three months. Stat. 18 Car. 2. c. 2. 32 Car. 2. c. 2.

2. By stat. 22 Geo. 2. c. 46. the former acts concerning the distempered horned cattle are continued until the 24th of September 1749, and from thence to the end of the then next session of parliament ; and has been amended by several subsequent acts, and is continued by stat. 27 Geo. 2. c. 14.

CHAP. LXX.

Conventicles.

1. **C**onstables, headboroughs, tithingmen, churchwardens, &c. are required to levy the fines imposed on those who shall be present at unlawful conventicles, by virtue of a warrant under the hand of one or more justices. About conventicles.
 22 Car. 2. c. 1.

2. Con-

2. Constables, &c. knowing or being credibly informed any conventicle within their precincts, and not giving information thereof to some justice of peace or chief magistrate, and endeavouring to convict the persons, forfeit 5 *l.* 22 *Car. 2. c. 1.*

3. On information given of conventicles, constables, &c. with aid and assistance may, by virtue of a warrant from one or more justice or justices, or chief magistrate (upon refusal of admission) break open doors, and enter into any house or place, where they are informed such conventicles are held, and take into custody persons unlawfully assembled. *Ibid.*

4. The houses of peers not to be searched, unless in the presence of the lord lieutenant, or two justices of the peace; and protestant dissenters are excepted out of this act. *Stat. 1 W. & M. c. 18.* But if an assembly of dissenters should be held in any place with the doors locked or bolted during the time of service they are liable to prosecution as others, notwithstanding taking the oaths, &c. directed by the act 1 *W. & M. c. 18.*

5. Any person sued for acting according to the statute 22 *Car. 2. c. 1.* may plead the general issue, and give the special matter in evidence, and recover treble costs. *Stat. 22 Car. 2. c. 1.*

C H A P. LXXI.

Distresses.

About distresses, 1.

THE constable in taking distresses is to assist the landlord or person distraining, and where any goods or chattels shall be taken in distress for any rent reserved, and due upon any demise, lease or contract, and the tenant and owner of the goods shall not within five days after such distress taken, and notice thereof given, and of the cause left at the dwelling-house, or most notorious place on the premises charged with the rent distrained for, replevy the same according to law; then the landlord, or person distraining, may, with the sheriff or under sheriff of the county, or with the constable of the hundred, parish or place where the distress shall be taken (who are required to be aiding and assisting therein) cause the goods and chattels to be appraised by two sworn appraisers, and afterwards sell the same for the best price towards the satisfaction of the rent, and charges of distress, appraisement and sale, leaving the overplus in the sheriff's or constable's hands for the use of the owner. *Stat. 2 W. & M. c. 5.*

2. *N. B.* The under sheriff, constable, &c. have power to administer an oath to the appraisers.

Appraisers

Appraisers O A T H.

YOU shall swear that you will faithfully appraise and value the goods now taken in distress, and mentioned in the inventory to you shewn, as between buyer and seller, according to the best of your skill and understanding; you shall not through partiality, interest, or otherwise, over or under estimate the said goods, but impartially do your duties herein.

So help you God.

4. And where tenants fraudulently convey away goods, the landlord, &c. may in five days seize such goods wheresoever found, as a distress for rent in arrear, except *bona fide* sold for a valuable consideration, by *stat. 8 Ann. c. 17.*

5. Now by *stat. 11 Geo. 2. cap.* where goods are fraudulently remov'd, &c. landlords may seize them within thirty days after; and if they do not exceed the value of fifty pounds, two justices (upon complaint in writing from the landlord or his bailiff) may hear, &c. in a summary way, and adjudge offenders to pay double value to landlords; to be levied by distress, &c. and for want of distress, six months hard labour in the house of correction, if the money be not sooner paid: There is an appeal to the general or quarter-sessions.

6. Landlords, or their stewards, &c. may break open houses, &c. where such goods are kept, being assisted by a constable, &c. who must assist therein: In case of a dwelling-house, oath being first made before a justice of a reasonable ground of suspicion. *Ibid.* See *Warrants.*

C H A P. LXXII.

Drunkenness.

Constables are to levy the sum of 5 s. on persons convicted of drunkenness, for the use of the poor; and if the party is not able to pay it, he must be set in the stocks six hours, About drunkenness.

1. 4 *Jac. 1. c. 5.* 21 *Jac. 1. c. 7.*

2. Neglecting to levy the said penalty upon warrant from the justice, to forfeit 10 s. 4 *Jac. 1. c. 5.*

3. Constables, tithingmen, churchwardens, &c. are to suppress drunkenness. 21 *Jac. 1. c. 7.*

C H A P. LXXIII.

Escapes.

About Escapes.

1. **I**F a constable permits a felon to escape before he is arrested, it is a misdemeanor, for which he may be indicted and fined; and if the felon be actually taken and in custody and then he voluntarily suffers him to escape, or to kill or destroy himself, it is felony in the constable; but if the escape be by negligence, or involuntary, or the felon destroys himself unawares to the constable, it is only fineable. *Dalt.* 379. *Cro. Eliz.* 752.

2. Constable may pursue an offender making an escape in another county, and bring him back to the justice of peace. *Crompt.* 148, 173, &c. He may put a felon in the stocks and lock him in, or put irons upon him, or pinion him to prevent an escape, when he is about to carry him to a justice of peace or to gaol. *Dalt.* 342.

3. He may discharge any person arrested on suspicion of felony only, where no felony is committed; but if a felony be actually committed, he cannot justify the discharging him, though he know that the party is innocent; but it must be done by due course of law; otherwise it will be an escape. *Crompt.* 40. *Cro. Eliz.* 202.

4. Constables *ex officio* are to apprehend felons, call others to their assistance, apprehend persons upon suspicion, and carry them before a justice, &c. and any person may arrest one who has committed felony. The constable may justify the breaking open a house to take a felon; and if the felon fly, he is to make an inventory of his goods in the presence of neighbours, and send hue and cry after him, and the neglect thereof is fineable by the justices.

5. If upon such flight he is apprehended in another county the felon must be committed where taken, and not where the fact was done, but must be removed thither by *Habeas corpus* in order to be tried.

6. Two justices (*quorum unus*) are to set a tax upon every parish in a hundred, where damages are recovered against any one or more inhabitants of that hundred, upon the statute of *Winton*; and the constables of every parish are to set a tax upon every inhabitant of those parishes where they refuse to contribute, and may levy the same by distress, &c.

C H A P. LXXIV.

Highways.

BY *stat. 2 & 3 P. & M. c. 8.* constables were yearly on ^{About high-}
Tuesday or Wednesday in Easter week to call together the ^{ways.}
inhabitants, and choose two surveyors of the highways for the
next year, or they were liable to be fined in quarter-sessions.
2 & 3 P. & M. c. 8.

2. But now by statute *3 & 4 W. & M. c. 12.* constables,
churchwardens, &c. and inhabitants are enjoined to meet the
next after *Christmas day*, and the greater part of them so met to
agree on persons qualified to serve the office of surveyor; a list
of which the constable must return to the justices of peace at a
special sessions on the third of *January* following, in order to
their appointment of surveyors, under the penalty of 20 s. The
penalty for the constables not serving such surveyors with
the justices warrant within six days after appointment.

3. Constables and churchwardens have power to call a bailiff
or a high constable to account for fines received for defaults in
repairation of ways on presentments, &c. and if he should refuse
to pass his accounts, they may summon him before two justices,
who may commit him till he has satisfied all the arrears, except
1 s. in the pound for his own fee for collecting, and 1 s. in the
pound for the clerk of the peace. *2 & 3 P. & M. c. 8.*

4. By *stat. 22 Car. 2. c. 12.* all constables, as well as sur-
veyors, are to put the act in execution, relating to the repairing
and enlarging of highways, on pain of forfeiting a sum not ex-
ceeding 40 s. at the discretion of a justice of peace, and are to
pay the penalties relating to scavengers, and defaults in clean-
ing the streets of *London, &c.*

C H A P. LXXV.

Hue and Cry.

A Constable is to raise hue and cry upon notice, and de- ^{About hue and}
scribing the felon, and telling him which way he is ^{cry.}
one; and for this purpose he is to call upon the parishioners to
assist him in the pursuit of the felon to the next constable, and
to the next, who is to do as the first, and so from town to
town and county to county, &c. And in the mean time the

first constable is to make an inventory of the felon's goods, the presence of his neighbours; if he refuse to pursue the felon he may be indicted, &c. But the place where he gave notice must be set forth in the indictment. *Cro. El.* 654, 655.

2. Pursuers of the hue and cry may search suspected houses and arrest suspicious persons; and not only officers, but all others who shall pursue the hue and cry, may arrest all such persons in their search and pursuit they shall find suspicious, and carry them before some justice of the peace of the county where taken to be examined where they were at the time of the felony committed. *13 Ed. 1. c. 1.*

3. Inhabitants of any hundred, where hue and cry is made neglecting to pursue, shall answer one moiety of the damages recoverable against the hundred, where the robbery is committed, by *stat. 27 El. c. 13.*

4. Where any of the robbers is apprehended, or where the action is not prosecuted within one year after the robbery committed, the hundred is not chargeable for the robbery; and the hue and cry shall not be adjudged legal, unless the pursuit be both by horse and foot. *Dyer* 370.

5. He who goeth not at the command of the constable, upon hue and cry, shall be grievously fined and imprisoned. *2 Inst.* 172.

6. Where damages are recovered against one, or some of the inhabitants of the hundred for a robbery, and the rest refuse to contribute thereunto, two justices of the peace (*quorum unus*) dwelling within or near the hundred, may, for the levying thereof, set a tax upon every parish within that hundred, according to which the constables and headboroughs of every town may tax the particular inhabitants within their limits, and then levy the money upon such as refuse, by distress and sale of the goods, restoring them the overplus; and after the money is gathered, they are to deliver the same to the justices, or some of them who made the rate, within ten days. *Stat. 27 El. c. 13.*

Who shall make
hue and cry, by
stat. 8 Geo. 2.
c. 16.

7. Every constable, boroughholder, headborough or tithingman to whom notice is given, or at whose dwelling-house notice of any robbery is left, and every constable of the hundred, and every constable, &c. of any town, parish, village, hamlet, or tithing within the hundred, or franchises within the precinct thereof, wherein a robbery happens, as soon as the same comes to his knowledge either by notice from the party robbed, or from any other person to whom notice was given thereof, pursuant to this or any other statute, are, with the utmost expedition, to make, and cause to be made fresh suit, and hue and cry, after the felon or felons by whom the robbery was committed. And if any constable, &c. offend in the premises, by refusing or neglecting, &c. he forfeits for every refusal or neglect 5*l.* by action, half to the king, half to him that will sue. *Stat. 8 Geo. 2. c. 16.*

C H A P. LXXVI.

Inns.

INn-keepers are to sell all kinds of victuals for man and About inns.
beast at reasonable prices, having respect to the price sold
the markets adjoining, without taking any thing for horse-
ter, or they shall be fined and imprisoned, and for a third of-
fence, may be put in the pillory, by 21 Jac. 1. c. 21.

2. And if a common inn keeper or alehouse keeper shall
refuse to lodge a traveller, or to provide him victuals, &c. who
offers to pay ready money for the same, the constable, on com-
plaint, is to cause such inn-keeper, &c. to be indicted at the
next sessions, where the justices may punish him by fine and im-
prisonment. 10 Hen. 7. c. 8.

3. If the traveller does not approve this method of proceed-
ing, he may bring his action at law against the inn-keeper in
any of the courts at *Westminster*, and recover damages. *Dalt.*

4. *N. B.* Upon any disputes in an alehouse or tavern, &c.
without paying the reckoning, and the parties offer to make their
escapes, without paying, if there be no swords drawn, beating,
wounding, or visible breach of the peace, the constable is not
bound to go, though sent for, nor is it warrantable for him to
arrest and carry them before a justice, unless a warrant be put
into his hand; for this is only a debt, and the party aggrieved
must bring his action for the credit he gave for the victuals or
drink, &c. being freely deliver'd by his consent.

C H A P. LXXVII.

Juries.

AT *Michaelmas* sessions yearly, constables, &c. are to
give in to the justices of peace, a list of the names and
places of habitation (within their respective limits) of all persons
qualified to serve on juries between the age of 21 and 70, and
the justices shall impanel no others, &c. under the penalty of 20 l.
stat. 7 & 8 W. 3. c. 32.

2. The qualifications are 80 l. *per annum* freehold for a grand
jurymen, and 10 l. *per annum* freehold or copyhold for a petty
jurymen, except it be in corporations, where a freeman worth

40 *l.* in goods may serve on the petty jury, by *stat. 7 & 8 W. c. 32.*

3. But aliens, attornies, apothecaries, butchers, clergymen, counsellors, infants, persons attainted for any crime, may not serve on juries.

4. Constables neglecting to return lists of names of persons fit to serve on juries, shall forfeit 5 *l.* And by the *stat. 3 & 4 Ann. c. 18.* high constables are to issue their precepts to petty constables, to prepare such lists by virtue of a warrant from the justices in the sessions, under the penalty of ten pounds.

5. Lists of jurors qualified are to be made from the rates of each parish, and yearly fixed on the doors of churches, twenty days before the feast of *St. Michael*, that publick notice may be given thereof; and returning officers, as constables, wilfully omitting persons qualified, or inserting wrong persons, shall forfeit 20 *s.* by *stat. 3 G. 2. c. 25.*

6. Duplicates of the lists, when adjusted by the justices, to be delivered by the clerks of the peace to the sheriffs of counties; and constables must subscribe their lists, and attest the truth of them upon oath before one or more justices of peace, and deliver them to the high constables of the hundreds, who are to deliver them attested to the justices in sessions. *Ibid.*

7. By the same act, persons having estates held by lease for 500 years or more, or 99 years, or any other term determinable on lives, &c. of the yearly value of 20 *l.* are qualified to serve on juries; and none shall be returned as jurymen in *London*, who are householders having lands or personal estate to the value of 100 *l.*

8. The juries for trial of causes are to be chosen by ballot, by drawing papers with the names of the jurors summoned, rolled up in a box, &c. *Ibid.*

C H A P. LXXVIII.

Lamps.

About lamps.

1. **T**HE penalty of 2 *s.* for not hanging out lights, or not agreeing for lamps in the streets of *London*, is levied by constables. This matter is put upon a new footing in *London* by 17 *Geo. 2. c. 29.*

C H A P. LXXIX.*Land-Tax.*

1. **I**N collecting the land-tax, constables are to be assisting, About the land-tax. and where it is refused payment, they are to take a distress, &c. and in the day-time, with the collectors, constables may justify breaking open houses, by virtue of a warrant from the commissioners. 5 Geo. 2.

2. Where lands or houses are unoccupied, and no distress to be found, whereby the parish, &c. is charged, the collectors, constables, or tithingmen of the parish or place, may at any time after take a distress upon the lands, or in the houses to reimburse the parish; and if such distress be not redeemed within four days, they may sell the same, and distribute the money among the parties who contributed to the tax proportionably, rendering the overplus to the owner.

3. Wood may be cut at seasonable times in the year, and tithes, tolls or annual profits not distrainable, may be seized and sold for satisfaction of the tax where assessments are made upon such woodlands, or tithes, &c.

4. Persons are to be taxed in the parish where they dwell, for goods, wares or merchandizes in any other parish.

5. Commissioners appoint two of the most able and sufficient inhabitants of each parish, place or township, to be assessors, &c. and these are to return (along with the certificate of assessment) the names of two or more able and sufficient persons to be collectors of the monies which shall be assessed: and the parish or place in which they are employed, shall be answerable for these collectors paying in the money to the receiver general.

C H A P. LXXX.*Ministers disturbed.*

A Constable, *ex officio*, may apprehend one disturbing a minister, and carry him before a justice of peace. About ministers disturbed.

C H A P. LXXXI.

Presentments.

About presentments,

1. **C**onstables are to make presentment, on oath, at the quarter-sessions and the assizes, of all things within their knowledge against the peace, and relating to their office, mentioned in the particulars of their oath.

2. High constables, by virtue of a warrant from justices of peace, issue their precepts to petty constables, to make inquiry and presentments, &c. and they usually make their returns, and bring them to a justice to sign, and then carry them to the high constable as their return to his precept, who makes oath at the sessions or assizes, that he had them from the petty constable. *Dalt. c. 28.*

A Precept from a High Constable to Petty Constables, to make Presentments of Offences committed in their Precincts.

3. Berks, ff. **B**y virtue of a warrant to me directed, from, &c. four of his Majesty's justices of the peace for this county of Berks: These are to require you to make your appearance at the next general quarter-sessions of the peace to be held at, &c. on, &c. for the county aforesaid, and then and there to carry with you and produce in writing, a presentment, containing the names, professions, and places of abode of all or any persons who have done or committed treason, murder, felony, robbery, theft, riots, routs, and unlawful assemblies, assaults, batteries, bloodshed, rescues; using deceitful weights or measures, forestalling, ingrossing, or regrating, not pursuing hue and cry, keeping alehouses without licence, keeping bawdy-houses, being drunkards, swearers, blasphemers, profaners of the sabbath, harbourers of inmates, building cottages contrary to law, incroachment upon commons, defaults in not repairing highways and bridges, and in cleaning of ditches; and generally all manner of trespasses and offences whatsoever inquirable by you, and committed within your parishes and precincts; to the end, that offenders may be punished according to law. Dated, &c.

The Form of a Constable's Presentment.

The presentment of *A. B.* constable of, &c. in the county of, &c. made at the quarter-sessions of the peace, held for the said county the day of, &c.

THE said *A. B.* says upon his oath, that *C. D.* of the parish of, &c. in the county of, &c. aforesaid, does at this time, and has, for the space of one month past, kept an unlawful gaming-house in the said parish of, &c. viz. he has permitted servants, apprentices, &c. to play at cards, dice, and other games prohibited by law, to the great encouragement of vice, and disturbance of the neighbourhood there.

The said *A. B.* likewise further presents upon his oath, That *F.* of the said parish of, &c. frequently carries out stinking carcases, and other filth into the highways, which is a common nuisance to the parish, and an annoyance to travellers.

The said *A. B.* also presents *G. H.* to be a common disturber of the peace.

CHAP. LXXXII.

Prisoners and Prisons.

WHEN a constable carries a felon, or one suspected of felony, to gaol, the gaoler is obliged to receive him; but if he refuses to do it, then the constable may either secure the prisoner in his own house, or carry him back to the town where apprehended, and the town shall be chargeable for the keeping of him 'till the next gaol-delivery, where the gaoler shall be punished. 10 Hen. 4. Dalt. 310.

2. If a felon escape from gaol by the negligence of his keeper, and against his consent, it is felony in the prisoner for the breach of prison, and the gaoler is fineable. Dalt. 379. Staundf. 32.

4. If voluntary in the gaoler, it is felony in him.

3. Constables are to levy money for reparation of gaols by warrant from justices. Stat. 11 & 12 W. 3. c. 19.

4. Justices of peace in the sessions may tax every parish in the county, not exceeding a certain sum yearly, for the relief of poor prisoners, leviable by constable, &c. Stat. 43 El. c. 2.

5. The house of correction, and the compters of the sheriffs of London, are the common prisons for offenders for the breach of the peace, &c.

About prisoners, &c.

6. Constables may convey persons thither, taken up by the watch late at night, and who are unruly or suspicious; but they ought to be careful who they send thither, for fear of action for false imprisonment.

C H A P. LXXXIII.

Recusants.

About recusants. 1.

Constables may complain to, and carry before a justice persons suspected to be papists, &c. and they are to present once a year to the quarter-sessions those who absent themselves from church for the space of a month, and the names of their children above nine years of age, and of their servants, shall forfeit for every default 20 s. Stat. 3 Jac. 1 cap. 4. so constables must certify to the sessions the names of popish recusants convicted, who within twenty days after their arrival at the place of their birth or settlement, give in their names in writing to the minister, constables, &c. to be entered in a book for that purpose. Stat. 35 Eliz. cap. 2.

2. Constables may complain to a justice of persons suspected of recusancy, and such justice, on their refusal of taking oaths, may commit them till the next assizes or sessions. 7 Jac. 1. cap. 6.

C H A P. LXXXIV.

Robbery.

About robbery.

WH E R E damages are recovered against a hundred, for robbery committed on the highway, and two justices have set a tax upon the several parishes in the hundred; the constables in every parish are to tax particularly every inhabitant of those parishes, and levy the same by distress, &c. 27 Eliz. cap. 13.

2. The hundred is chargeable where a robbery is committed by day-light on any day except Sunday; but no hundred is chargeable, if any one of the malefactors is apprehended in ten days, or when the action is not commenced within a year.

3. A reward of 40 l. is given by statute for apprehending a robber on the highway, and the apprehender is likewise to be rewarded for the horses, arms, &c. of robbers. 4 & 5 W. & M. c. 8.

C H A P. LXXXV.

Servants.

1. **C**onstables and two householders of towns and places, by **About servants.**
an old law are to give testimonials to servants of their
faithful service, and servants not procuring such testimonials
shall not be retained, but may be punished as vagrants. 5 *El.*
cap. 4.

C H A P. LXXXVI.

Soldiers.

1. **C**onstables, tithing men, &c. are to quarter soldiers in **About soldiers.**
inns, livery-stables, ale-houses, victualling-houses, shops
selling brandy, &c. distillers and private houses excepted. *Stat.*
6 *G. 2. c. 3.*
2. Refusing to billet soldiers, shall be fined not exceeding 40 s.
nor less than 10 s. and if they receive any reward to excuse such
quartering, or if victuallers refuse soldiers quarter'd, shall for-
feit not under 40 s. nor above 5 l. *Ibid.*
3. If any soldiers shall be billeted on private houses without
the owner's consent, he may have his remedy at law; and any
military officer quartering soldiers otherwise than as directed by
statute, or abusing the constable, &c. shall be cashier'd. Any
justice of peace may command constables, &c. to give an ac-
count in writing of the number of officers and soldiers billeted
by them, with the names of the persons on whom billeted, and
their streets, signs, &c. to prevent abuses in the quartering of
soldiers.
4. Officers, civil or military, are not to quarter the wives,
children, or servants of officers, or soldiers in any houses, with-
out the consent of the owner, on pain of being cashier'd, if an
officer of the army, and of forfeiting 20 s. if a constable, &c.
leviable by warrant of the next justice of the peace. 6 *G. 2.*
c. 3.
5. By 11 & 12 *W. 3.* lewd and disorderly servants, vaga-
bonds and sturdy beggars, are to be sent to serve his majesty at
sea, by warrant from a justice directed to the constable, &c.
6. Constables and churchwardens are to levy by distress mo-
ney rated on persons for relief of poor maimed soldiers and ma-
riners, and pay it to the high constable. 43 *Eliz. cap. 2.*

C H A P. LXXXVII.

Sunday.

About Sunday.

1. **S**Earch is usually made on a *Sunday* by constables and other parish officers after such as profane the Sabbath, &c.

2. Persons who resort to wrestling, bowling, dancing, or any sport on a *Sunday*, forfeit 5 s. if above fourteen years of age, and 1 s. if under, levied by the constable by warrant of one justice and constables, churchwardens, &c. are to levy the penalty of 3 s. and 4 d. on such as use games on a *Sunday*, for the use of the poor, by distress; for want whereof the offenders shall be set in the stocks three hours. 1 Car. 1. cap. 1.

3. If any person doth any worldly labour on a *Sunday*, except works of necessity, he shall forfeit 5 s. And crying or exposing to sale any wares, unless it be milk or mackarel, incurs a forfeiture of the wares to the poor.

4. Butchers killing or selling victuals, are liable to a penalty of 6 s. and 8 d.

5. Carriers or drovers, &c. travelling, 20 s. and persons using boats, &c. on a *Sunday* (not allowed by a justice of peace) forfeit 5 s. Stat. 29 Car. 2. c. 7.

6. If any person shall serve any warrant, process, &c. on *Sundays* (except in cases of treason, felony, or breach of the peace) they shall answer damages, as if done without warrant, for false imprisonment, and the service be void. 22 Car. 2. c. 7.

7. If any one disturb a minister in preaching, praying or administering the sacraments, constables may apprehend him, and carry him before a justice, &c. 1 M. c. 3.

C H A P. LXXXVIII.

Supersedeas.

About a supersedeas.

1. **I**F a constable have a warrant to execute for sureties of the peace, and afterwards having a *supersedeas* from the court of chancery, or B. R. or another justice, &c. to discharge the sureties, he still insists upon having the party find sureties, and he refuse, and is detained, it is false imprisonment in the constable. Dalt. 390. Ch. 118.

C H A P.

C H A P. LXXXIX.

Swearing.

BY *stat. 19 Geo. 2. c. 21.* it is enacted, That from and About swearing.
 after the first day of *June 1746.* if any person shall pro-
 fanely curse or swear, and be thereof convicted, on the oath of
 any one or more witnesses or witnesses, before any justice of the
 peace, &c. or by the confession of the party offending, every
 such offender shall forfeit and lose the respective sums therein
 mentioned (that is to say) every day labourer, common soldier,
 common sailor, and common seaman, 1 s. every other person
 under the degree of a gentleman, 2 s. and every person of or
 above the degree of a gentleman, 5 s. and in case of a second
 offence, to forfeit and lose double, and for every other offence
 after the second conviction, treble the sum forfeited by any of-
 fender, for profane cursing and swearing, as aforesaid. And it
 is thereby further enacted, that in case any person shall pro-
 fanely swear or curse, in the presence and hearing of any con-
 stable, or other peace officer, it shall and may be lawful for any
 such constable or peace officer, and they are hereby authorized
 and required (in case any such person shall be unknown to them)
 to seize, secure, and detain such offender unknown to him, as
 aforesaid, and forthwith to carry him before the next justice of
 the peace, or other chief magistrate, where such offence shall be
 committed, and the said justice, &c. are thereby authorized and
 required, on oath of such constable, or other peace officer, to
 convict such offender in the manner therein directed; and in
 case such offender shall be known to such constable, or peace
 officer, they are thereby required speedily to make information
 before some justice of the peace, &c. in order that the offender
 or offenders may by such justice be convicted thereof, in man-
 ner and form as therein directed. And that if any constable, or
 other peace officer, shall wilfully and wittingly omit the perfor-
 mance of his duty in the execution of this act, and be thereof
 convicted, by the oath of one witness, before any justice of the
 peace, &c. every such constable, &c. so offending shall forfeit
 40 s. to be levied and recovered by distress and sale of the of-
 fender's goods and chattels, by warrant under the hand and
 seal of such justice, &c. to be disposed of. one moiety to the
 informer, the other to the poor of the parish where the offence
 shall be committed; and in case no distress can be had, then the
 justice, &c. to commit the offender to the house of correction,
 there to remain and be kept to hard labour for one month.
 And that all offences shall be prosecuted in eight days after the
 offence committed.

C H A P.

C H A P. XC.

Tithes.

About tithes.

1. **C**onstables and headboroughs, by virtue of a warrant from two justices, are to levy the money adjudged for refusing the payment of small tithes, by distress and sale in three days, and they may retain the charges for making the distress.

2. Two justices have power to summon the party, hear the complaint by witnesses on oath, and give judgment by making an allowance for the tithes, and ordering costs not exceeding 10 s. *Stat. 7 & 8 W. 3. c. 6. 10 & 11 W. 3. c. 15. and 6 Ann. c. 28.*

3. The tithes are to be under 40 s. *per annum*, and tithes due from quakers under 10 l. are thus recoverable. *1 G. 1. c. 7.*

4. In *London* the sums of money settled in lieu of tithes, by *22 & 23 Car. 2. c. 15.* are to be paid quarterly to the parsons &c. and upon refusal or neglect to pay the same, and demand made on the premises, the lord mayor, on oath of such refusal or neglect, may grant warrants for the collector, with the assistance of a constable in the day time, to levy the same by distress and sale of the party's goods, &c.

C H A P. XCI.

Vagrants.

1. **B**y *stat. 13 & 14 Car. 2. c. 12. by 12 Ann. c. 18.* made perpetual, constables, headboroughs and tithingmen, out of purse for conveying vagabonds, &c. to houses of correction, or work houses; they, the churchwardens and overseers of the poor, and other inhabitants in the parish, may tax all chargeable by *43 El. c. 2.* which rate being confirmed under hand and seal by two justices of peace, the said constables, &c. by warrant under hand and seal of two justices, may levy it by distress and sale of goods.

2. In the same act there is a clause, enacting, that justices of peace in their quarter-sessions may cause to be transported, rogues, &c. duly convicted and adjudged incorrigible, to the *English* plantations beyond sea.

3. One

3. One justice of peace may grant a licence to soldiers, mariners, or seafaring men, to travel home, and they shall not be deemed vagrants.

4. Any one justice of peace may license labourers in hay-time and harvest, to pass from one county to another to work, but not to wander or beg. *Per stat. 5 El. c. 4.*

5. Any two justices of peace may make a testimonial to serving-men (or other servants) departing from their masters; but they must not wander up and down idly, nor beg.

6. None may be suffered to take relief at any man's door, tho' within his own parish, unless it be by order of the overseers. Neither may any be suffered to beg by the highways, tho' in their own parish. If a man gives alms at his door, unless to such poor who is licensed to beg by the overseers, he forfeits 10s.

7. By stat. 2 Ann. c. 6. lewd and disorderly servants, rogues, vagabonds, and sturdy beggars (not being felons by 39 El. c. 17.) may be taken up, and sent into the sea service of his majesty; but this seems to be repealed in effect by stat. 12 Ann. c. 23. of vagabonds.

8. By stat. 6 G. 1. c. 19. justices of peace within their respective jurisdictions may commit vagrants, and other criminal persons charged with small offences, for safe custody, either to the common gaol or house of correction, as they in their judgment shall think proper.

A Commitment of a Vagabond to *Bridewell*.

To the keeper of *Bridewell* for the county of

Midd. ff. **W** Hereas A. B. was lawfully
passed from the parish of C. D.
in the county of to the parish of E. F.
in the said county, and has returned again into
the said parish of C. D. there to inhabit, without
a certificate from the said parish of E. F. where his settlement is,
as appears by his own confession: These are therefore to require
you to receive the said A. B. into your custody, and punish him as a
vagabond, until he shall be from thence discharged by due course of
law. Given under my hand and seal, &c.

10. Tho' a man have a certain habitation, yet if he wander out of his own parish begging, or otherwise misordering himself, he may be punished as a vagabond. 2 Roll. Rep. 172. *The King against Hollinsworth.*

11. A rogue who hath a testimonial, if thro' his or her default they do not pursue the order appointed by the said testimonial,

monial, they are *toties quoties* to be whipped as rogues; and is a rogue who shall carry his own passport without a guide.

12. No one is to be put out of the town where he dwelle nor to be sent to the place of his birth or habitation, but only vagabond rogue, such as wander abroad in the country, and such as beg in the same town where they dwell. 2 Salk. 52

13. If an hired servant falling sick be turned out of doors her master, and she begs in her passage from the place where she was at service to the place where she was born, adjudged begging to make a vagrant. *Style's Reports* 168.

14. Whoever is able to work, but will not, and wanders abroad, not having wherewith to subsist but by his labour, is a rogue. *Dalt.* 308.

15. Persons to be taxed for conveying vagrants, &c. by *14 Car. 2. c. 12.* are every inhabitant of the parish, viz. the parson, vicar, and all occupiers of houses, lands, tithes, and woods; but a landlord is not to be taxed in respect of his rent, and this tax or rate must be confirmed under the hands and seals of two justices.

16. If a child be duly settled with father or mother, and then die or run away thence, it must there continue, and may not be sent to the place of its birth. *Lamb.* 207. See *Chap. XXXII. XLII, LVI.*

A Warrant to the High Constable of the City and Liberty of *Westminster*, &c. to make a general Privy Search.

To the high constable of the city and liberty of *Westminster*, and to all constables and others his majesty's officers whom these may concern.

17. Middlesex and **T**HES E are in his majesty's name to Westminster. will and require you the said high constable, to issue out your precepts to such and so many of your petty constables as you shall think necessary, and that you, together with them, taking to your assistance a sufficient number of men, do make a general privy search in the night-time, the day of next, in the parish of and parishes thereto adjacent within your said liberty, as you shall think convenient, in all places in the said parishes, where any common house or place of unlawful games shall be suspected to be holden, kept and maintained, and the keepers of the same, and the persons there haunting, resorting and playing, to apprehend; and also all rogues, vagabonds, and sturdy beggars, to apprehend, and take, and bring the said persons before us, or such others of his majesty's

the justices of the peace as shall be assembled at the vestry room of the parish of ^{on} next, at o'clock in the forenoon, to the end they may be further dealt with according to law. And you are hereby required to make a due return of this our warrant at the time and place aforesaid. Given under our hands and seals this, &c.

18. The form of the vagrant's pass is prescribed by the act of parliament 17 Geo. 2. c. 5. See above Chap. XXXIII. sect. 12.

19. The justice who shall make any pass or order for the passing or conveying any rogue or vagabond to the place of his or her birth, &c. shall, at the same time with such pass, cause to be delivered to the constable, &c. a certificate ascertaining how the person is to be conveyed, by horse, cart, or on foot; and in what time, and what allowance such officer is to have for conveying such person to the place he is to pass him to, in the form, and to the effect set forth by the stat. 17 Geo. 2. c. 5. The constable is to be paid the charges of conveying rogues, vagabonds, and incorrigible rogues, by the treasurer of the county; by stat. 26 Geo. 2. c. 34. See above Ch. XXXIII. sect. 19.

A Warrant to levy 20s. on a Constable for not conveying a Vagrant to the Place whither he was ordered to be sent.

20. Berks, to wit. **W** Hereas D. L. the headborough of M. in the county of, &c. was ordered by a pass to convey A. B. a vagrant from the parish of M. where he was taken wandering and begging, to the parish of Q. in the county of, &c. where he was born, and where his last legal settlement was, whither he the said D. L. was by the said pass directed to convey the said A. B. but the said D. L. did not convey, or cause to be conveyed, (or did counterfeit a certificate, receipt or note, or altered the sum in the certificate mentioned, as the case is) the said A. B. to the parish of Q. he being the person really intended by the said pass to be conveyed thither; by reason whereof he hath forfeited 20s. These are therefore to require you forthwith to levy the said sum of 20s. on the goods and chattels of the said D. L. by distress and sale thereof, rendering to him the overplus (if any such there be) and that you pay one moiety thereof unto J. M. who first informed me of the said offence, and the other moiety to the churchwardens and overseers of the poor of the parish of, &c. where the said offence was committed, for the use of the poor of the said parish; and hereof fail not. Given, &c.

A Receipt from the next Constable, on Delivery of a Vagrant, to be indorsed on the Certificate.

21. **I** A. B. constable of, &c. in the county of, &c. do hereby acknowledge, that I have received this day, &c. of and from C. D. constable of, &c. in the county of, &c. J. L. a vagrant, by the said C. D. brought hither in his way to, &c. the place of his last legal settlement, by virtue of a pass granted by, &c. Witness my hand, the day and year above-written.

A Receipt for Money for passing Vagrants.

22. **R** Eceived this day, &c. of A. B. treasurer of the county of, &c. the sum of, &c. for conveying J. L. a vagrant, to the town of, &c. being the sum ascertained by the justice's certificate within mentioned. Witness my hand this, &c.

E. M. petty constable of, &c.

A Justice's Allowance and Taxation of a Constable's Account for conveying Vagrants, to be added on the Foot of the Account.

23. **I** Having examined this account of the constables of, &c. for conducting and entertainment of vagrants, (by virtue of passes which were allowed, and signed by me) do think the same to be just and moderate, and hereby direct and order the same amounting to, &c. to be paid by the treasurer of the county of, &c. Witness my hand, &c.

A Commitment of a Madman.

To the keeper of the house of correction for the county of B.

24. Berks, to wit. **W** Hereas it appears upon oath unto us, two of his majesty's justices of the peace for the said county, that A. B. is a lunatick, furiously mad, and dangerous to be permitted to go abroad: These are therefore to require you to receive the said A. B. into your custody, and him safely keep secured and locked up, during such time as such lunacy or madness shall continue; and if extremely outrageous and furious, then, if necessary, to chain the said A. B. and also to keep the said A. B. until discharged by due course of law. Given under my hand and seal, &c.

C H A P. XCII.

Warrants.

A Constable is not to dispute a justice of peace his warrant, About warrants. although he exceeds his authority; but if the justice issues a warrant to be executed out of his jurisdiction, where he is not a judge, or by a constable out of his precinct, &c. the constable will be punished if he executes it. *Dalt.* 464, 465.

Where a warrant is directed to a constable by name, commanding him to execute it, it has been held he may, if he will, execute it out of his own precinct in any place in the county. If the warrant be directed to all constables generally, and to one in particular by name, no one constable can execute the same out of his parish. *Chorley Village's case*, 1 *Salk. Rep.*

It is at the election of a constable to carry an offender apprehended before any justice, if the warrant be not special to bring the offender before the justice who granted it. 5 *Rep.*

A justice of peace his warrant ought to specify the cause of being issued; and where a warrant is lawful, any contempt to throwing it in the dirt, &c. may be punished by fine or imprisonment. *Crompt.* 149.

Where a justice of peace commands one being present to arrest another, who is also in his presence, it is good, and is regarded as an arrest made by the justice himself. *Br. Faux* 33.

No one or more justices of peace can make a warrant, upon mere surmise, to break any man's house, to search for a felon or stolen goods; there must be a felony actually committed, and upon to, whereon to ground their warrant. A warrant directed by the justice of peace to two men jointly to arrest another, &c. yet any one of them alone may do it; because it is for the execution of justice, and for the publick good.

557. c. 169. A warrant directed by a justice of peace to any person but the sheriff, he to whom it is directed must execute it himself; for he can command no other to do it, neither by word nor writing, nor make any deputy. *Dalt.* 587. c. 169.

The officer, to whom the warrant is directed and delivered, ought with all speed and secrecy to find out the party, to execute the warrant; and if it be a warrant for the peace or good behaviour, or in any case where the king is party, the officer may break open doors to take the offenders; and if he is resisted or assaulted, he may justify the beating and wounding. &c.

A justice of peace his warrant of the peace ought not to be granted against a peer of this realm, or peers, by creation

or birth, but *B. R.* may; but if they are only noble by marriage, and the husband dies, and then they marry beneath peerage, they lose that dignity.

6. A warrant from a justice of peace, to answer to such thing as shall be objected against the party, without alledging a cause (in cases not bailable) was said by *C. J. Coke* to be good the case, *Wilson v. Dodd*, 1 *Roll's Rep.* 235. *Pl.* 15. *H. 12 Jac.* 1. But he cannot commit to prison for certain cause but must alledge the cause. *Boucher's case*, *Mich.* 3 *Jac.* *Tro. Jac.* 81. *Pl.* 4.

7. If the warrant say it was dated at one place, and it is dated at another place in the same county; yet the warrant is good, and it shall be taken to be dated where the warrant do say it was dated. It is best for a justice of peace to put hand and seal to every warrant.

8. A general warrant, to search for felons or stolen goods seems illegal; for it is hard to leave it to the discretion of a common officer to arrest what persons, and search what houses pleases. *Hawk. P. C. Part 2. c.* 13. yet see a precedent to this in *Dalt.* 114.

9. If a justice issues out a warrant to be executed out of his jurisdiction where he has no authority, and he is not a judge, the constable will be punished if he executes it. *14 H. c.* 26. *Lamb.* 67. *Dalt.* 465. and so he will if the constable execute a warrant that has apparent mistakes in the penalty required to be levied, or out of his precinct. *Dalt.* 464.

10. An order was made by two justices, which was confirmed by the sessions upon an appeal; and it was directed to the constables of, &c. but not to the churchwardens or overseers of the poor. *Per Cur'*: Since the constables have executed the order 'tis well enough, tho' in strictness they are not bound to obey it, tho' directed to them; for if a justice directs a warrant against any person by name, who is no officer, the person is not bound to obey it; but if he doth, and 'tis a matter within the jurisdiction of a justice of peace, the warrant will bear him out, and he may justify under it. *Cartberw's Rep.* 449. *Wang and Brandon* parishes in *Suffolk*, *Pos. b.* 10 *W.* 3. *B. R.*

11. A constable may execute a warrant in any other county, &c. if indorsed by a justice of such other county, &c. and bring the offender before a justice of such other county, &c. and if the offender shall give bail, the constable is to deliver the record, examination or confession of the offender, and all other proceedings relating thereto, to the clerk of the assizes, or of the peace of the county, &c. where the offence was committed, under the penalty of 10 *l.* But if the offence shall not be bailable, or the offender shall not give bail, the constable may carry the offender before a justice of the county where the offence was committed. *Stat.* 24 *Geo.* 2. *c.* 55.

12. Justices in their warrants of distress are to limit a time for the sale of the goods; the constable making such distress may deduct the reasonable charges of detaining, keeping, and selling such distress, out of the money arising by the sale; and overplus, if any, after such charges, and also the penalty or sum of money shall be fully paid, shall be returned to the owner of the goods distrained; and the constable, if required, shall shew the warrant to the party whose goods are distrained, and suffer a copy thereof to be taken. This act not to alter or repeal the statutes 7 & 8 W. 3. c. 34. and 1 Geo. 1. c. 6. relating to distresses on quakers for not paying tithes and church rates. Stat. 7 G. 2. c. 20.

C H A P. XCIII.

Watches.

Constables, &c. are to see that night watches be kept About watches.

from sun-set to sun-rising, (in a city six men at every watch) who must be able persons, inhabitants of the place, and watch by turns, *stat. Winchester, Ed. 1. c. 4.* and persons refusing to serve on the watch, on complaint to a justice, he may compel them, or bind them to the good behaviour; and some authors are of opinion, that the constable may put the party in the stocks for contempt; but this seems rather to be when a watchman is disorderly in doing his duty. *Dalt. 240.*

2. The watchmen appointed have a large power in the night to arrest strangers, and others going armed, suspected persons, &c. and to examine them; and whether they be horsemen or footmen, drivers of cattle or carriages, or such as carry burdens, &c. the watch may stay them till morning, if they cannot give a good account of themselves, their company and carriage, &c.

3. Watchmen are to apprehend night-walkers, vagabonds, persons going armed, &c. and they may arrest strangers in the night, and examine them; and if they find cause of suspicion, secure them till the morning. Constables shall be aiding and assisting to the watch, and the watchmen are to obey their orders in conveying offenders to the compters, &c.

4. If any will not obey the arrest, the watch may make hue and cry upon them: And for such arrest of a stranger (especially if suspected) none is liable to punishment.

A Warrant by Order of Sessions to keep Watch and Ward.

To the high constable of the hundred of, &c.

5. Berks, to wit. **W** Hereas several robberies, felonies and other crimes have been lately committed in the county aforesaid, it was therefore ordered at the last quarter sessions of the peace, held at C. for the said county, that watch and ward be duly set and kept, in all and every usual place and places within your hundred; you are therefore to take care that the same be done pursuant to the said order, and you are likewise to apprehend all idle and suspicious persons, and bring them before or some other of his majesty's justices of peace for the said county, order to proceed against them according to law; and hereof to do without at your peril. Given under our hands and seals, &c.

C H A P. XCIV.

Weights and Measures.

About weights and measures.

1. **T**HERE is to be one measure, &c. throughout the kingdom. *Magna Charta*, 9 H. 3. Every city, borough, and town is to have a common balance, at which the inhabitants may freely weigh their goods bought and sold, and sealed weights in the keeping of the head-officer or constable there; otherwise the city forfeits 10 l. the borough 5 l. and the town 40 s. to the king. *Stat. 8 H. 6. c. 5.* Restrained only market-towns or towns corporate, by 11 H. 7. c. 7.

2. Measures and weights of brass are to be sent to every city and borough, and mayors or chief officers in cities and boroughs shall have a special mark for sealing of weights and measures and take one penny for sealing a bushel, and a halfpenny for every other measure, and for every hundred weight 1 d. halfpenny, and every less weight a farthing; and they refuse, or delay to seal, shall forfeit 40 s. Sealing any weight or measure not agreeable to the standard, or suffering persons to sell or buy by other measures, &c. incurs a forfeiture of 5 l. 7 H. 7. c. 4.

3. Mayors, &c. shall view all measures and weights once a year, break or burn those which are defective, and inflict a penalty of 6 s. 8 d. *Stat. 11 H. 7. c. 4.* Also an indictment will

for selling by false weights and measures, it being an offence at common law as well as by statute.

4. Constables may search and examine, if any persons use other measures than such as are *Winchester* measure, and agreeable to the standard in the *Exchequer*, and sealed, &c. and if they find any unsealed, they may break them, and present the offenders at the next quarter-sessions. *Stat. 22 Car. 2. c. 8.*

5. Persons selling corn or salt by any bushel or measure, not according to the standard, and struck even with the brim, forfeit 40 s. and the corn, &c. *Stat. 22 & 23 Car. 2. c. 12.*

6. If any baker shall make or expose to sale bread wanting an ounce of due weight, he shall forfeit 5 s. and wanting less than an ounce 2 s. 6 d. to be levied by a constable. *Stat. 1 G. 1. c. 25.*

7. Bakers selling their bread, consisting of peck, half-peck, or quartern loaves, at a higher price than set by the lord mayor of London, or by the mayors, &c. of towns, or two justices of peace where there are no mayors, shall forfeit 10 s. to the informer, to be levied by distress by constables, &c. *Stat. 3 G. 2. c. 29.*

8. Any one justice of peace, mayor, &c. upon proof by the oath of one witness, that a man hath bought or sold by, or doth keep any other weight or measure, whereby any thing is bought or sold, than according to the standard, may send his warrant to the churchwardens and overseers of the poor of the place where the offence is committed, or one of them, to give them notice thereof, who are thereupon to levy by distress and sale of goods the shillings, rendering the overplus; and if there be no distress, he may commit the offender to prison, till he pay the same forfeiture.

Conviction of selling by false Weights and Measures.

BE it remembered, that A. B. on, &c. comes before me J. S. Esq; one of his majesty's justices, &c. and then and there takes oath, that C. D. on, &c. last past, did sell ten bushels of wheat in a bushel or measure not being agreeable to the standard in his majesty's exchequer, but less than the same, contrary to the statutes. I do therefore adjudge him the said C. D. guilty of the said offence, and convicted thereof as the laws direct. Given, &c.

Indictment against a Constable for an Escape.

Berks, to wit. **T**HE jurors, and so forth, That whereas one A. B. late of K. in the county afore-said, husbandman, was taken and arrested for feloniously stealing a horse

horse of one R. B. and afterwards, to wit, the 30th day of April in the year, and so forth, as aforesaid, was committed by J. S. esq; one of the justices of our said lord the king, for keeping the peace in the county aforesaid, to the custody of R. G. the constable of the town aforesaid, to be carried to the gaol in the county aforesaid, and that the said R. G. then and there had the said A. B. in his custody for the said felony; and that afterwards, the said 30th day of April in the year aforesaid, at the said L. in the county aforesaid, he the said R. G. voluntarily and feloniously permitted the said A. B. to go at large from the custody of the said R. G. against the peace of our lord the king, his crown and dignity.

N. B. In an indictment against a constable for refusing to execute a justice of peace his warrant, the indictment must set forth the nature and tenor of the warrant, or else 'tis not good. 1 Vent. 325.

Indictment against a Constable for not raising Hue and Cry.

11. Berks. to wit. **T**HE jurors, and so forth, That the day of and so forth, at H. in the county of S. certain malefactors by force and arms did make an assault upon R. N. yeoman, and five pounds of money numbered as the proper money of the said R. N. then and there found, feloniously did take and carry away; whereupon the said R. N. instantly the same day and year aforesaid, came to the town of B. in the county aforesaid; and then and there gave notice to one J. O. being the then constable of the said town of B. that the said malefactors had committed the said felony in manner and form aforesaid; and then and there required the said J. O. to levy fresh hue and cry against the said malefactors, and that he would command the inhabitants of the said town of B. to prosecute such hue and cry, as of right and by the law of the land they ought to prosecute; yet the said J. O. not at all minding the due execution of his office in this behalf, did not levy the said hue and cry, nor command the said inhabitants immediately to prosecute the said hue and cry; but then and there totally refused and neglected to do this, to the ill example of others of his majesty's subjects, and against the peace of our said lord the king that now is, his crown and dignity, and against the form of the statute in that case made and provided.

Indictment against those who refuse to assist a Constable to apprehend a Felon.

12. Berks, to wit. **T**HE jurors, and so forth, that R. G. of H. in the said county, labourer, on the day, and so forth, at H. aforesaid, in the county aforesaid, feloniously did take and lead away one cow of the goods and chattels of one G. E. and whereas J. O. constable of the town of H. aforesaid, in the day and year aforesaid, at H. aforesaid, did command and require E. P. of H. aforesaid, and G. P. of the same, yeomen, to help him the said J. O. then being constable of H. aforesaid, to take and arrest the said felon for the felony aforesaid; yet the said E. P. and G. B. the day and year aforesaid, at H. aforesaid, did altogether refuse, and each of them did refuse to do it, in contempt of our sovereign lord the king that now is, and against the peace, and so forth.

The like may be against those who refuse to follow the hue and cry, being commanded by the constable, or for refusing to assist a constable, to convey prisoners to the gaol, or to bring them before a justice of peace, &c.

Churchwardens, constables, and all other parish officers, ought to take notice of the following resolution of the house of commons.

Mar. 23. 1696. Declared and resolved, that no member of this house hath any privilege against payment of any aids, supplies, or tax granted to his majesty, or any parish duties.

C H A P. XCV.

Wrecks.

1. **I**F any person shall offer to sale any goods belonging to any wreck unlawfully taken away, or reasonably suspected so to have been, any constable, &c. may stop and seize the said goods, and shall forthwith carry the same, or give notice of such seizure to a justice of peace; and if the person offering the same to sale, shall not within ten days after the sale, make out the Property of the said goods to be in him, or in the person, who employed him to sell the same, then the goods shall be delivered to the use of the right owner, upon payment of a reasonable reward for such seizure (to be ascertained by the justice) &c. Stat. 26 Geo. 2. c. 19.

C H A P.

C H A P. XCVI.

*Of the Duty of Parish Officers, and Peace Officers
with respect to the new Militia.*

1. **B**Y the several acts of parliament, that have within a few years been passed, for the better regulating the militia forces of this kingdom, a very considerable addition has been made to the business of parish officers as well as constables which it will be necessary here to explain. But as all those acts of parliament have, by the statute of the 2d year of his present majesty's reign, been reduced into one law, by which all former laws relating to the militia (except in some particular cases not immediately relative to the present subject) are repealed, I shall confine my observations on the duty of parish officers and constables in relation to the militia, to that statute only.

Stat. 2 Geo. 3.
c. 20.

2. The said statute 2 Geo. 3. c. 20. is intitled, "An act to explain, amend, and reduce into one act of parliament the several laws now in being relating to the raising and training the militia within that part of Great Britain called England."

To continue in
force seven years.

And is to continue in force for seven years, and from thence to the end of the then next session of parliament, and no longer. *sect. 148.* And all former acts relating to the raising of the militia within that part of Great Britain called England, and the dominions of Wales, are thereby repealed, except, in such cases as are therein specially directed to be subject to the provisions of the said former acts, or any of them; and the militia raised by virtue of the said former acts, shall be subject to all the same provisions and regulations as the militia directed to be raised by virtue of this act are subjected to, *sect. 144.* And with respect to what relates more immediately to the duty of parish officers and constables, it is thereby enacted as follows.

Repeal of former statutes.

5*l.* per man to be annually paid by those counties, &c. where the militia has not been raised.

3. In counties and places where the militia has not been raised in pursuance of stat. 30 Geo. 2. c. 25. and other subsequent acts relating to the militia, or shall not be raised by virtue of this act, the sum of 5*l.* shall be annually paid in lieu of every private militia man, by this act directed to be raised within the same. And the king's lieutenant, or three or more deputy lieutenants, at the end of every year in which the militia for such counties or places shall not have been raised, are from year to year to certify the same, and also the whole amount of the several sums of 5*l.* per man to be raised on such counties, to the justices of the peace at their general or quarter sessions, who are forthwith to rate and assess the sums so certified, in the same manner as county rates are usually rated and assessed by stat. 12 Geo. 2. or any other act: And such rates or assessments when received are to be paid

And the amount thereof certified to the sessions.

How to be rated, levied, and accounted for.

paid by the treasurer of the county to the receiver-general, *sect.*

and to be made, levied and paid, distinctly from all other county rates, *sect.* 22. And the several parochial officers or

other persons, who shall pay or be liable to pay the rates or assessments so made and rated on any parish, town and place, and

The duty of parochial officers herein.

to such parochial officers and persons on whom any such rate or assessment shall be levied, after notice given of the amount of the rate or assessment on such town, parish or place, either before payment thereof by such parochial officers or persons, or after the same shall have been actually paid by, or levied on them, shall rate and levy such monies by a separate and distinct rate and assessment on every such respective town, parish or place, in such manner and proportion, and with such powers for recovery thereof, as any other county rate may be assessed or levied, *sect.* 24. And where a certain number of private mili-

tia men are directed to be raised for any county, together with any city or town, being a county of itself, and such militia has or shall not be raised, the said sum of 5 *l.* per man shall be apportioned between such county, and such city or town, in such proportion as their respective quotas paid to the land-tax bear to each other; unless an apportionment of the men shall have been actually made, in which case the said sum of 5 *l.* per man shall be born by such county, and by such city or town, in proportion to the numbers of men apportioned to each, *sect.* 25.

4. The rates thus raised are to be paid over by the receiver-general, together with the land-tax, into the Exchequer, distinguishing the money received by virtue of this act; and the same shall be kept separate from all other money, and paid by the high treasurer or commissioners of the treasury, to the treasurer of such counties as have raised, or shall raise their militia, in proportion to the number of men raised by each county, to be made part of the county stock; and the lords of the treasury are to apportion and issue the money accordingly:

Application of the money raised by the rates aforesaid.

And no allowance or deduction shall be made out of the money so paid into the Exchequer, *sect.* 26. Provided, that where the militia of any counties or places shall be raised by virtue of this act, such counties or places shall be exonerated from the said sums, and the assessments made in respect thereof shall be suspended, *sect.* 27.

When the militia is raised, the said rates to be suspended.

5. In counties and places where the militia has not been raised, the lord lieutenant, with two or more deputy-lieutenants, or on the death or removal, or in the absence of the lord lieutenant, three or more deputy-lieutenants, are to meet, at some city or principal town, in the county, &c. on the second Tuesday in May yearly; and if there should happen to be no such meeting, the lord-lieutenant, or in his absence, three or more deputy lieutenants, shall summon another meeting, at the same place, on a day to be fixed by such summons, of which notice is to be given in the *London Gazette*, and in any weekly

The manner of raising the militia, where not already raised.

First general meeting.

paper

Who are to form
a general meet-
ing.

First general
meeting.
Subdivision
meetings to be
appointed; and
2d general meet-
ing.

Orders to chief
constables, to
issue precepts to
petty constables
to make and re-
turn lists of men
fit to serve.

How lists are to
be made.

Persons exempt
from serving in
the militia.

paper usually circulated (if any such there be) in the same county, &c. fourteen days at least before such meeting, *sect. 42.*

6. All general meetings are to consist of the lord lieutenant with two or more deputy-lieutenants, and on the death or removal, or in the absence of the lord lieutenant, of three more deputy-lieutenants, in the larger counties; but in counties of *Cumberland, Huntingdon, Monmouth, Westmorland and Rutland*, and in all the counties and places in *Wales*, two deputy lieutenants, with one justice of the peace, or one deputy lieutenant with two justices of the peace, shall exercise all powers conferred by this act on three deputy-lieutenants elsewhere, *sect. 91.*

7. At such *first general meeting*, subdivisions of the deputy-lieutenants are to be appointed, with the times and places for the *first* meetings within the said subdivisions, (which subdivision meetings are to consist of three or more deputy-lieutenants, or two deputy lieutenants, with one justice, or one deputy-lieutenant with two justices) as also the time and place for a *second general meeting*. And orders shall be issued to the chief constable, and where there is no chief constable to some other officer of the several hundreds, rapes, laths, wapentakes, or other divisions within the county, &c. to require, by orders under their hands, the constables, tythingman, headborough, or other officer of each parish, tithing, or place, within their respective hundreds, &c. to return to the deputy-lieutenants, at their respective subdivision meetings appointed at the first general meeting, fair and true lists, in writing, of the names of all the men usually, and at that time, dwelling within their respective parishes, &c. between the ages of 18 and 45, distinguishing their respective ranks and occupations; and where the true names of such persons cannot be procured, the common appellation of them shall be sufficient, and which of the persons so returned labour under any infirmities, incapacitating them from serving as militia men, having first affixed a true copy of such list on the door of the church or chapel belonging to such parish, &c. and if there be no church or chapel there, on the door of the church or chapel of some parish or place adjoining, on some *Sunday* morning, before they shall make such return, and at least three days before the said meeting; and also notice in writing at the bottom of such list, of the day and place of such meeting, and that persons who shall think themselves aggrieved may then appeal, and that no appeal will be afterwards received, *sect. 42.*

8. But no peer of this realm;—nor any commission officer serving in any of the king's other forces; or in any of his majesty's castles or forts;—nor any non-commission officer or private man serving in any of the king's other forces;—nor a member of either university;—nor any clergyman;—nor a licensed teacher of any separate congregation;—nor any constable

able or other such peace officer;—nor any articked clerk, apprentice, seaman, or seafaring man;—nor any person mustered, trained, and doing duty in the king's docks for the service thereof;—nor freemen of the company of watermen on the river Thames;—nor any poor man who has three children born in wedlock, shall be compelled to serve personally, or provide substitute to serve in the militia, *sect. 43.*

9. At the *first subdivision meetings* above-mentioned, the constables or other officers are to attend to make their returns of the lists, and to verify them on oath; and the deputy-lieutenants, &c. there assembled (after hearing persons aggrieved by having their names inserted in the lists, or by any others being omitted), shall direct the lists to be amended, as the case shall require, and the names of all persons excepted by this act to be struck out; and shall appoint the times and places for their *second subdivision meetings*, and shall return to the *second general meeting*, all the lists for the several parishes, tithings, and places so amended, *sect. 42.*

First subdivision meetings.

Constables to return lists, and verify them.

Lists to be amended on appeal.

2d subdivision meetings appointed.

Lists to be returned to second general meeting.

10. At the *second general meeting* copies shall be ordered to be made of all the said lists, and such copies to be returned to the second meetings in the several subdivisions wherein the parishes, tithings, and places, for which such lists are made and returned are respectively situate; and shall appoint what number of men in each hundred, rape, lath, wapentake, or other division, shall serve in the militia, towards raising the number directed by this act to be raised for such county, &c. in proportion to the whole number contained in such lists. *Ibid.*

Second general meeting.

Lists to be copied, and returned to 2d subdivision meetings.

Numbers of men for each hundred to be apportioned.

2d subdivision meeting.

11. At the *second subdivision meetings*, the deputy lieutenants, &c. shall appoint what number of men shall serve for each parish, tithing, and place, or parishes, tithings, and places, in proportion to the number appointed at the second general meeting to serve for each hundred, &c. and, if a proper number of officers be then appointed, shall appoint another subdivision meeting to be held within three weeks; and shall issue out an order to the chief constable, and other officer of the respective hundreds, &c. requiring them to give notice to the constable, &c. of each parish, &c. within their respective hundreds, &c. of the number of men so appointed to serve for each parish, &c. and of the time and place of the next subdivision meeting. *Ibid.*

Numbers of men for each parish to be appointed.

Third subdivision meeting to be appointed.

Orders to be given to the chief constable to give notice to the petty constable of the number of men appointed in each parish.

12. At the *third subdivision meeting*, the deputy-lieutenants, &c. assembled in pursuance of such appointment, shall cause the number of men appointed to serve as aforesaid (except as after excepted) to be chosen by lot out of the lists returned for such parish or parishes, &c. and shall appoint another meeting to be held with

Third subdivision meeting.

The men appointed to serve to be chosen by lot, and the

fourth subdivi-
sion meeting ap-
pointed.

The chief con-
stable to order
the petty constab-
les to give no-
tice to the men

in three weeks in the same subdivision; and shall issue out order to the chief constable or other officers of the hundred &c. to direct the constable, &c. of each parish to give notice to every man so chosen to serve in the militia, to appear at such meeting, which notice shall be given or left at his place of abode, at least seven days before such meeting, *ibid.*

Fourth subdivi-
sion meeting.
Constables to re-
turn when no-
tices were served.
Men to be sworn
and inrolled, or
provide substi-
tutes.

13. At the fourth subdivision meeting, the constables and other officers are to attend and make a return on oath, of the days when such notice was served; and every person chosen by lot as aforesaid, is then to attend, and take the oath in the act mentioned, (to be administered by any one deputy lieutenant) and shall be inrolled to serve in the militia of such county, &c. for three years, in a roll to be then and there prepared for that purpose; or shall provide a fit person, to be approved of by the deputy lieutenants, &c. then met, to serve as his substitute, who shall take the said oath, and sign on the said roll his consent to serve as his substitute during the said term, *ibid.*

Penalty for re-
fusing to serve,
or provide sub-
stitutes.

14. And persons so chosen by lot to serve, (not being *Quakers*) refusing or neglecting to appear, and to be sworn and serve, or to provide a substitute to be approved of as aforesaid, who shall be sworn, and sign his consent to serve, shall forfeit 10*l.* and at the end of three years be liable to serve again, or provide a substitute.

Deputy lieute-
nants may unite
parishes, &c.

15. Deputy lieutenants in their subdivisions may, whenever they think necessary, add together the lists for two or more parishes, tithings, or places, and proceed on such lists added together, as if originally returned for one parish, &c. so as to make the choice of militia men, within such subdivision, as equal and impartial as possible, *stat. 44.*

Parish officers,
with consent of
vestry, may pro-
vide volunteers,

16. Churchwardens and overseers of any one, or several united parishes, &c. with the consent of the inhabitants, taken at a vestry or other meeting held for that purpose, may provide, and produce to the deputy lieutenants, &c. at their subdivision meetings for choosing militia men by lot, any volunteers or volunteers, who, if approved of by the deputy lieutenants, shall be then sworn in and inrolled; and in such case so many persons only shall be chosen by lot, out of the list returned for such parish, &c. as shall be wanted to make up the whole number to serve for the same: And if the churchwardens or overseers shall give such volunteers any money to serve, they may make a rate on the inhabitants of such parish, in the usual manner of making the poor's rate; which, being approved of by two justices of the peace, the churchwardens or overseers may collect, and reimburse themselves what they shall have paid

and make a rate
for paying them.

voluntiers as aforesaid, and shall apply the overplus as part of the poors rate; and if any person shall refuse to pay the said rate, on complaint thereof made by the churchwardens or overseers to one justice, he may, by warrant under his hand and seal, levy the same by distress and sale of the offender's goods, and the overplus, if any, after the charges of the distress and sale shall be paid. But no ballotted person, who shall have served three years, or be then serving, by himself or substitute, shall be liable to pay such rate, *sect. 45*. And persons aggrieved by such rate, may appeal to the next general quarter-sessions as in appeals against poors rates, *sect. 46*.

Persons exempt from such rate. Appeal against it.

17. Churchwardens or overseers shall pay to persons chosen by lot, sworn, and inrolled; or who shall provide fit substitutes as aforesaid, within one month after such swearing or inrolling of the persons chosen, or of his substitute, (if the regiment or battalion in which he, or his substitute, shall serve be then embodied) any such sum not exceeding 5 *l.* as the deputy lieutenant, &c. in whose presence such person shall be so chosen, shall adjudge to be one half of the current price then paid for a voluntier in the county or riding where such person shall be chosen; which sum shall be taken out of the rate made as aforesaid for providing voluntiers; or in case no voluntiers shall be provided, then out of a rate to be made for that purpose by the rule aforesaid, *sect. 47*. Provided that if such man so chosen by lot, and serving for himself, shall within one month after his enrolment, be disapproved of and discharged by the commanding officer of the regiment or battalion, then the money shall not be paid to him, but to the next person chosen by lot in his stead; and if the substitute he shall have found be disapproved in manner aforesaid, the money shall not be paid to the man so chosen, unless he shall serve himself, or find another substitute, *sect. 48*. Nor shall any person so chosen be intitled to one half of the said current price of a voluntier, without an order under the hands of the persons before whom he was chosen by lot, *sect. 49*.

Parish officers to pay half the current price paid for voluntiers, to persons serving for themselves or by substitute, when embodied.

Unless discharged within one month after being inrolled.

18. One justice of the peace, on complaint upon oath of a hired servant, serving in the militia, shall order so much of his wages as shall to such justice appear to be due, to be immediately paid to him by his master or employer, in proportion to the service he has performed, under the contract or agreement between them when such servant was hired; and the justice shall proceed thereon as directed by stat. 20 Geo. 2. for the better adjusting and more easy recovering of the wages of certain servants, &c." *sect. 59*.

Hired servants, serving in the militia, to be paid their wages.

19. After passing this act, no person (other than churchwardens and overseers as aforesaid, for the purposes aforesaid) shall contract, undertake, or agree, with any person for any sum of money, or any other consideration or reward, to indemnify or insure

None but parish officers to insure persons from serving, or providing substitutes, &c.

insure any person liable to serve in the militia, against serving therein; or to provide a substitute for any person chosen by to serve; or to pay the penalty of 10*l.* laid by this act on persons refusing to serve or provide a substitute, on penalty of forfeiting 100*l.* for each offence; one moiety thereof to the prosecutor, and the other to the poor of the parish; and every such contract, &c. to be void, *sect.* 51.

Restriction of
the last clause.

20. But nothing in this act shall prevent persons actually chosen by lot to serve, from procuring, by themselves or other proper substitutes, *sect.* 52. Nor persons of the same parish or township, tithing, or place, or of two or more parishes, &c. added together for the purposes of this act, from entering into subscriptions amongst themselves, for paying jointly for substitutes, to be provided for any one or more of the subscribers whom the lot may fall, *sect.* 53.

Hired voluntiers
or substitutes in-
listing in the
army; such in-
listing to be void,
unless the money
paid them be re-
turned.

21. If any hired voluntier or substitute, sworn and enrolled to serve in the militia, shall be enlisted in any of his Majesty's other forces, such enlisting shall be void, until the said militiaman, or the officer with whom he shall enlist, shall have paid the overseers of the place for which the said militia man served the full sum he received for his service; which shall be paid out by them in or towards providing another fit person to serve in the militia three years in his place; and if the money received be insufficient to provide another fit person, the overseer shall be reimbursed such further sum as he shall pay in providing such other fit person, in the same manner as directed by this act on providing of voluntiers; and if the money received shall exceed the sum expended in providing such person, the overseer shall account for the surplus, as money received in his hands for the purposes of providing voluntiers for such parish, &c. And if such militia man shall not, at the time of his enlisting, inform the officer with whom he enlists, that he is a militia man, and for what place he serves, he shall on conviction thereof, on oath, before one justice, be committed to the house of correction, for not more than three months, *sect.* 54.

Where the militia
has been raised,
an annual general
meeting to be
held, and what
to be done there.

22. Where the militia has been, or shall be raised, the lieutenant and deputy lieutenants, shall be annually held a general meeting on the last Tuesday in May, or the last Tuesday in October, as they shall think most convenient for the due execution of this act; and shall then appoint the times and places for holding four or more subdivision meetings in every year, shall cause new lists in the several parishes, &c. to be made and returned to the first subdivision meetings, in the same manner as before directed in counties, &c. where the militia has been raised, *sect.* 57.

When lists are
lost or destroyed,
new ones shall be
made.

23. Where the list of any parish, tithing, or place shall be lost or destroyed, the deputy lieutenants, &c. in their subdivision

visions, are to cause a new one to be made and returned to them at their next subdivision meeting, in the same manner as the list lost or destroyed was caused to be made and returned to them by direction of the general meeting, *sect.* 58.

24. The subdivision meetings are to be held at the times appointed at the general meetings, *sect.* 59. But the lord lieutenant, &c. at a general meeting to be held after reasonable notice, may change or alter any subdivision meeting or meetings, whenever it shall be found convenient so to do, by *sect.*

25. But the several subdivision meetings already appointed, shall remain and continue, till altered at a general meeting, *sect.* 66.

25. If, at a subdivision meeting, any private militia man shall shew just cause for his discharge, and, being embodied, shall likewise produce a regular discharge from his commanding officer, the deputy lieutenants and justices there assembled shall discharge him from serving; and in his stead, and also if there should be any other vacancy, by death or otherwise, such deputy lieutenants, &c. shall, after having amended the lists in the same manner as lists are to be amended in counties where the militia has not been raised, (see before §. 9.) cause a like number of persons to be chosen by lot, out of the lists of such parish, &c. where such vacancies shall happen, unless such number shall be otherwise provided, as by the act is directed; which persons so chosen, or their substitutes provided and approved as aforesaid, shall be duly sworn and inrolled, and the substitutes shall subscribe their consent to serve, and shall serve in the said militia for the space of three years, subject to the directions, provisions, and penalties in this act, *sect.* 59.

But if any militia man, during the time the regiment or battalion in which he serves shall be embodied, be discharged by his commanding officer, such discharge shall be sufficient to prevent his being liable to be apprehended as a deserter, but shall not extend to cause another man to be chosen in his room, unless he be likewise regularly discharged by a subdivision meeting as aforesaid, *sect.* 63.

26. On any vacancy in the militia, by death or otherwise, the deputy lieutenants, &c. may appoint a subdivision meeting for filling up such vacancy, giving seven days notice thereof, *sect.* 60.

27. In case any substitute, duly approved of, before the expiration of the term for which he was to serve, shall happen to die, or be appointed a serjeant in the militia, or be legally discharged, the person for whom he served shall not be obliged to serve himself, or find another substitute; but the vacancy shall be filled up in like manner as directed by this act, in case of vacancies occasioned by the death or discharge of persons serving for themselves, *sect.* 61.

Subdivision meetings when to be held; and how to be changed.

How militia men shall be discharged, and others chosen and inrolled in their room

Subdivision meetings may be appointed to fill up vacancies.

Death, promotion, discharge of a substitute, shall not subject his principal to serve or find another.

One deputy lieutenant may swear in and inroll a substitute, approved by two deputy lieutenants, &c.

28. Any one deputy lieutenant may, at any place in the subdivision he usually acts in, swear in and inroll any substitute to serve for any place in such subdivision, on a certificate under the hands and seals of any two other deputy lieutenants, or any one justice of the peace together with any one deputy lieutenant, or of any two justices acting in, or residing near the same subdivision, of their having seen, and approving of such substitute as proper to serve, provided that the clerk of the subdivision shall and do attend, with the roll, at such swearing and inrolling, *sect. 62.*

How militia men having served their time, shall be sent home.

29. Militia men whose time of service shall be near expiring, during the time the regiment, &c. in which they serve shall be absent from the county, &c. to which they belong shall be returned by the commanding officer, so as that they may reach the said county by the expiration of their term, *sect. 64.*

How a militia man changing his place of abode shall serve.

30. If a militia man change his place of abode from one parish, &c. to another, the militia whereof shall serve in the same regiment or battalion, he shall continue to serve in such regiment or battalion for the place from whence he removed and shall not occasion a vacancy for such parish, &c. but shall be trained, exercised, and paid, by the officer of the company to which the militia of such parish, &c. to which he removed shall belong; but if such change of abode be from one county to another, or from one parish, &c. to another, the militia whereof shall serve in different regiments or battalions, such militia man shall serve, upon the first vacancy that shall happen in such regiment or battalion, until his service be completed. And every such militia man shall, before he changes his place of abode, give notice thereof to any three deputy lieutenants, &c. at some subdivision meeting, or to one deputy lieutenant who shall give him a certificate of the time he shall have served in the militia for the respective parish, &c. from his inrolling to serve in the same; and if such certificate be given by one deputy lieutenant only, he shall certify the same to the next subdivision meeting, and such militia man shall produce the said certificate to the next subdivision meeting for the subdivision wherein he shall then dwell, or to one deputy lieutenant residing near the parish, &c. to which he shall remove, who shall certify the same to the next subdivision meeting. And if a militia man so changing his place of abode, shall not give notice and produce his certificate as aforesaid, he shall on conviction thereof, on oath before one or more justices of the peace, forfeit 20s. which, if not immediately paid, shall be levied by distress and sale, by warrant of such justice or justices rendering the overplus (if any) on demand, after deducting the charges of such distress and sale, to such offender; and for want of sufficient distress, such justice or justices shall comm

Must give previous notice of his intention to the deputy lieutenants, and obtain a certificate.

Penalty on removing without notice and certificate.

such offender to the house of correction, for any time not exceeding one month, *sect. 67*. And the clerk of the subdivision meeting shall, on notice given by any militia man of changing his place of abode, and of a certificate granted him as afore-
 said, forthwith give notice thereof to the clerk of the meeting for the subdivision to which the parish, &c. where he then resides shall belong, *sect. 68*.

Clerk of the subdivision from which a militia man removes, to give notice to the clerk of the subdivision to which he removes.

31. No militia man having served as a substitute, shall, by such service, be excused from serving for himself when chosen by lot, *sect. 69*.

Serving as a substitute no exemption from serving for himself.

32. Chief constables, constables, and other officers refusing neglecting to return such lists as aforesaid; or to comply with such orders and directions as they shall from time to time receive from his Majesty's lieutenant, deputy lieutenants, and justices in pursuance of this act; or being guilty of any fraudulent partiality in making such returns; may, and are to be imprisoned, by any three or more deputy lieutenants, or by two deputy lieutenants together with one justice, or any deputy lieutenant together with any two justices, in the common gaol of the county, &c. for one month, without bail or mainprize, or at the discretion of such deputy lieutenants, &c. are to be fined in any sum not exceeding 5*l.* nor under 40*s.* to be levied by distress and sale, by warrant under the hands and seals of such deputy lieutenants, &c. rendering the overplus (if any) on demand, after deducting the charges of the distress and sale. And the deputy lieutenants, or any three or more of them, &c. within their respective subdivisions may, from time to time, by their order or warrant under their hands and seals, command the attendance of the constable, tithingman, headborough, or other officer of any parish, tithing, or place within their several subdivisions, at such times and places as in such order or warrant shall be expressed; and on refusal or neglect to appear according to such order or warrant, such constable, &c. shall suffer the pains and penalties aforesaid, *sect. 71*.

Penalties on constables and other officers on neglect of duty, or committing frauds, &c.

33. Persons who shall by gratuity, gift, or reward, or by promise thereof, or of any indemnification, or by menaces, endeavour to prevail on any chief constable, or any constable, or other officer of any parish, &c. to make a false return of any list for any parish, &c. or to erase or leave out of any such list the name of any such person as ought to be returned, shall, for every such offence, forfeit and pay 50*l.* to be recovered in action of debt, &c. in any of his Majesty's courts of record at Westminster; all which penalties shall go to the person or persons suing for the same, *sect. 72*.

Penalty on persons endeavouring to prevail on constables, &c. to make false returns, &c.

34. Persons refusing to tell their own christian and surnames, or those of any man lodging or residing within their houses, to

Penalty on persons refusing to tell their names to constables, &c.

Deputy lieutenants being informed, or suspecting any person to be fraudulently returned as an apprentice in any list, to avoid serving, may examine the matter, and if any fraud appear, may order the person to serve immediately, or on the first vacancy.

Penalty on the pretended master.

Lord lieutenant to transmit to the privy council, a state of the numbers of men fit to serve in the county, &c. that the privy council may, from the whole of such returns, settle the quota for each county, in proportion to the whole number of men to be raised in the kingdom.

According to which proportion so settled, the numbers for each county shall be augmented or diminished, at a general meeting.

any constable, tithingman, or other officer, authorised by the act to demand the same, shall forfeit and pay 10*l.* *ibid.*

35. If at any subdivision meeting, the deputy lieutenant &c. shall receive information, or shall suspect, that any person inserted in any list, described as an apprentice, has been fraudulently bound apprentice, in order to avoid serving in the militia, they may make inquiry into the binding out such person apprentice, and summon such persons as they shall think necessary to appear before them, at such time and place as they shall appoint, and to examine such persons on oath, touching the matter in question; and in case any such fraud appear, they may appoint such person so bound apprentice, to serve immediately in the militia for the parish, &c. for which such person shall be returned, if there be a vacancy, and if no vacancy that time, then on the first vacancy that shall happen; and the person to whom such apprentice shall be so bound shall forfeit 10*l.* which, if not forthwith paid, shall be levied by distress and sale, by warrant under the hands and seals of such deputy lieutenants, &c. returning the overplus, (if any) after charges paid; one moiety thereof to go to the informer, (if any), and the other moiety, (or the whole if there be no informer, in manner after mentioned, *sect.* 73.

36. The lord lieutenant of every county, riding, or place, is, from time to time, to transmit to the privy council, a statement of the numbers of men fit to serve in the militia for the county, &c. of which he is lieutenant; and after all the numbers shall be so transmitted, the privy council is to fix and settle, as near as may be, the number of private militia men who shall for the future serve for each county, &c. by the proportion which the numbers returned for each county, &c. bear to the whole number of private men directed to be raised by this act, and forthwith to transmit accounts of the numbers so fixed and settled to all the lords lieutenants respectively; and where the number so settled shall be greater than the number by this act appointed for any county, &c. then, a general meeting to be held for that purpose, the lord lieutenant and deputy lieutenants shall appoint what number shall serve for each respective hundred, rape, &c. or other division within the county to which they belong; and the additional number of private militia men to make up the whole number so settled, shall be chosen in the same as all other private militia men are by this act directed to be chosen; and all the additional men so chosen, or their substitutes (to be appointed by this act) and volunteers, shall be sworn and inrolled, or sign their consent to serve as before directed, and shall be subject, in case of refusal, to the same penalties as are in like cases inflicted by this act. And wh

the number of private militia men so settled as aforesaid, shall respectively less than the number by this act appointed to serve for any county, &c. then the lord lieutenant and deputy lieutenants, at a general meeting to be held for that purpose, shall discharge, by lot, proportionably out of each respective hundred, &c. or other division, so many private militia men shall exceed the number so settled as aforesaid, *sect. 74.*

37. Where it shall at any time appear to the lord lieutenant and deputy lieutenants at a general meeting, that the distribution by them made of the whole number of militia men charged on the county, &c. among the several hundreds, &c. or other divisions, was either unequally and erroneously made, or, from any subsequent alteration of circumstances, is become unequal and disproportionable; they may make a new and more equal distribution of such numbers among the several hundreds, &c. or other divisions, according to the method prescribed by this act for the original distribution, and may cause such additional number of men to be provided or chosen for each respective hundred, &c. or other division, as shall become necessary in consequence of such new distribution, in like manner as is to be done where the same shall become necessary in consequence of the accounts transmitted from the privy council, *sect. 75.*

38. No serjeant or private man serving in the militia, shall, during the time of such service, be liable to do personally any statute work, or to serve as a peace or parish officer, or in the army or navy, without his consent thereto, *sect. 76.*

39. In case any private militia man shall, on the march, or at the place of annual exercise, be disabled by sickness, on the advice of the peace of the county, or any mayor or chief magistrate of any city, town, or place, where such man shall be, may order him such relief as he shall think reasonable, by warrant under his hand and seal; and the officers of the parish, tithing, or place, where such man shall serve as a militia man, shall reimburse the same to the officers of the parish where such militia man shall then receive such relief, which shall be allowed in their accounts, on producing the above order, *sect. 77.*

40. No person having served personally, or by substitute three years in the militia, shall be obliged to serve again, until by rotation it comes to his turn, *sect. 78.*

41. Every man having served in the militia, when drawn out and embodied, being a married man, may set up and exercise any trade he is fit for, in any town or place in Great Britain or Ireland, as freely as any mariner or soldier may by *stat. 22 Geo. 2. c. 44. sect. 79.*

42. No private militia man shall be intitled to his cloaths for his own use, till he shall have served three years, if the regiment or battalion in which he serves be unembodied; but

A general meeting may make a more equal distribution of men for each hundred, &c. where former ones have been erroneously or unequally made, or are become so.

Militia men whilst in service, to be free from statute work, &c.

Militia man being sick on a march, or at annual exercise, shall be relieved by his parish.

Persons having served their time, not to serve again, but by rotation.

Married persons, having served in the militia, when drawn out, may set up any trade, &c.

At what time private militia men shall be intitled to their cloaths.

if drawn out and embodied, the cloaths shall, at the end of one year, be applied in such manner as the colonel, or commanding officer, shall judge best for the use of such militia man, *sect.* 80.

Weekly allowance to the families of militia men, when in actual service, to be made by the overseers of the poor.

43. If any militia man who shall have been accepted and inrolled as a substitute, hired man, or voluntier, before 22 May 1760, or any militia man chosen by lot, either before or after that day, shall, when embodied and called out to actual service, and ordered to march, leave a family unable to support themselves, the overseers of the poor of the parish, tithing or township, where the family of such militia man shall dwell, shall, by order of one justice of the peace, out of the poor rate for such parish, &c. pay to such family a weekly allowance, according to the usual price of labour in husbandry within the county, riding, division, district, or place where such family shall dwell, by the following rule, *viz.* for one child under the age of ten years, any sum not exceeding the price of one day's labour; — for two children under the age aforesaid, any sum not exceeding the price of two days labour; — for three or four children under the said age, any sum not exceeding the price of three days labour; — for five or more children under the said age, any sum not exceeding the price of four days labour; — and for the wife of such militia man, any sum not exceeding the price of one day's labour; and in places where the poor's rate is not sufficient for the purpose aforesaid, a new rate or rates for raising a sum sufficient shall be made for that purpose. And every such weekly allowance shall forthwith be reimbursed to the overseers, by the treasurer of the county, riding or place where such parish, &c. is situate, out of the publick stock, *sect.* 81. And the treasurer is to keep exact and distinct accounts of all the monies by him so reimbursed to overseers, and at the end of seven months from the passing this act, and afterwards at the end of every six months shall return the said accounts, with those he shall receive from the several treasurers of cities, &c. to the office of the treasurer remembrancer of the *Exchequer*, *sect.* 82. And in all cities, towns, liberties, divisions, and places, not liable to contribute to county rates by virtue of stat. 12 Geo. 2. c. 29, the justice for every such city, town, &c. at any sessions or meeting, or the major part of them there assembled, shall appoint a treasurer, and assess on every parish, tithing, township, hamlet, or vill, within the limits of their jurisdiction, in proportion as the poor's rates have been usually assessed there; and shall cause to be paid out of the money collected for the relief of the poor of every such parish, &c. into such treasurer's hands, such monies as they shall think fit, for reimbursing the overseers of the several parishes, &c. within their jurisdictions, the amount of the weekly allowances paid by the overseers to the families

Overseers to be reimbursed what they shall pay.

Accounts to be kept of all sums so paid to overseers.

How such sums shall be raised and accounted for in cities, &c. not liable to contribute to county rates, &c.

of the militia men residing within their respective jurisdictions as aforesaid; and the treasurer shall forthwith reimburse the same to the overseers accordingly; and such treasurer is to keep exact and distinct accounts of all the monies so paid into his hands, and so reimbursed by him to the overseers as aforesaid; and shall, at the end of every six months, transmit the said accounts to the treasurer of the county or riding which such city, town, &c. is, by this act united with and made part of, for the purposes of this act, *sect.* 83. The treasurer of any county, &c. who shall, after passing this act, reimburse any overseer of any parish, &c. any sum of money in pursuance of the direction of this act, on account of the weekly allowance to the family of any militia man, serving in the militia of any county, riding, city, town, liberty, division, or place, other than where such family dwell, shall deliver or transmit an account of such money, signed by one or more justices for the county, &c. where such family shall dwell, to the treasurer of the county, &c. in the militia whereof such man shall serve; and thereupon the treasurer, to whom such account shall be delivered or transmitted, shall pay to the treasurer who shall so have delivered or transmitted such account, the sum or sums so by him reimbursed to such overseers, and shall be allowed the same in his accounts, *sect.* 86. Special directions are given in sections 83, 84, and 85, of this act, concerning the manner of assessing, levying, and accounting for these rates in the cities of *Lincoln, Exeter, and Bristol*; for which, as being too particular for this work, the reader is referred to the act itself.

44. If a Quaker shall be chosen by lot to serve in the militia, and shall refuse or neglect to appear, and to take the oath and serve in the militia, or to provide a proper substitute to serve for him, then any three deputy lieutenants, or any two deputy lieutenants together with one justice, or any one deputy lieutenant with any two justices, shall, if they think proper, upon as reasonable terms as may be, provide and hire a fit person, who shall take the said oath, and subscribe his consent to serve for three years, as the substitute of such quaker; and such deputy lieutenants, &c. shall by distress and sale of the goods and chattles of such quaker, by warrant under their hands and seals, levy such sums as shall be necessary to defray the expence of providing and hiring such substitute, rendering the overplus, if any, after deducting the charges of such distress and sale, to such quaker. And in case any measures be used in making such distress, which may by such quaker be thought oppressive, he may complain to the deputy lieutenants and justices at their next meeting, who are empowered and required to hear and finally determine the same, *sect.* 87.

If Quakers chosen by lot to serve in the militia shall refuse to serve, a substitute shall be appointed for them by the deputy lieutenants.

Who shall levy the expence by distress of the quaker's goods and chattels.

And redress grievances on complaint to them.

Justices of the peace may order the costs of making such distress on quakers, to be paid on complaint of officers.

Deputy-lieutenants and justices may act in any, and every subdivision in the county.

If a sufficient number of deputy-lieutenants and justices do not appear at any subdivision meeting, the clerk is to appoint another within 14 days.

General application of forfeitures for not serving in the militia.

Persons liable to serve having more than one place of abode, shall serve where first returned.

The militia shall be annually trained and exercised.

45. In every parish, tithing or place, or two or more parishes, &c. added together as aforesaid, in which any such rate shall be made, where the churchwardens or overseers shall make complaint to a justice, that a quaker or quakers, refuse to pay the money he or they shall be rated at, such justice shall order such costs and charges for levying such distress, as he shall think reasonable, not exceeding 10 s. on each of the said quakers where there are no more than two of them, and where there are a greater number, not exceeding 5 s. on each of them, *sect. 87.*

46. Any deputy-lieutenant or justice of the peace may act in the execution of this act in any and every subdivision within the county, riding, or place, for which he is or shall be commissioned; and each and every such deputy-lieutenant and justice shall have the same power and authority therein, as is by this act given to any deputy-lieutenant or justice, within the subdivision to which he is or shall be particularly appointed, *sect. 89.*

47. If at any subdivision meeting a sufficient number of deputy-lieutenants and justices of the peace to act, shall not appear, the clerk of such meeting, shall, by notice in writing, given or left at the places of abode of all the deputy-lieutenants within such subdivision, appoint another meeting to be held within fourteen days, at the same place where such meeting had been before appointed, giving at least five days notice thereof *sect. 92.*

48. All sums of money arising by forfeitures paid by, or levied on, persons refusing to serve in the militia personally, or by substitute, are to be applied by the deputy-lieutenants and justices, within their respective subdivisions, in providing a substitute for the person paying such penalty; and the surplus, if any, shall be paid to the colonel or commanding officer of the regiment or battalion, and be applied as part of the regiment's stock, *sect. 93.*

49. Every person liable to serve in the militia, having more than one place of residence, shall be deemed to reside only, and shall serve within the county, riding, or place, where his name shall have been first inserted in a list, and returned; and the clerk of the subdivision meeting, to which such list shall be returned, shall, if required, grant a certificate *gratis* under his hand, that such person's name was inserted in such list, specifying the times when made and returned, *sect. 94.*

50. The militia is to be trained and exercised by regiment or battalion twice in a year, fourteen days at each time, or once in a year for twenty-eight days together, as shall be directed by the lord lieutenant and two or more deputy-lieutenants, and in the death or removal, or in the absence of the lord lieutenant by any three deputy-lieutenants, at such times and places as shall be least inconvenient to the public, to be by them appointed at a general meeting; and during such time of training and exercise

life, they are to be subject to all the provisions in the act for punishing mutiny and desertion, not extending to life or limb, *sect. 99.*

51. Mayors, bailiffs, constables, tithingmen, headboroughs, and other chief magistrates, and officers of cities, towns, parishes, tithings, villages and other places in *England, Wales, and Berwick upon Tweed*, and in their default or absence, any one justice of the peace inhabiting within or near any such city, &c. and no others, may, and by the act are required, to quarter and billet the officers and private men serving in the militia, at the times when called out to annual exercise in inns, livery-stables, alehouses, victualling houses, and all houses of persons selling brandy, strong waters, cyder, wine, or metheglin, by retail, on application to them made by the lord lieutenant or by the colonel, or commanding officer of the militia of the county, riding, or place: And such mayors, &c. are also required to quarter and billet serjeants, drummers, and fifers so serving in the militia, who are to be provided by the owners of the inns, livery-stables, and houses where so quartered, at such times for which no provision has by law been made for that purpose, with convenient lodgings only, *sect. 100 and 101.*

Directions for quartering the militia when drawn out for annual exercise.

Quartering of serjeants, drummers and fifers.

52. Notice of the times and places of exercise, to which the militia of each parish, tithing, or place, are to resort, is to be sent, to the chief constables or other officers of the several hundreds, rapes, laths, wapentakes, or other division, with directions to forward the same to the constables, tithingmen, headboroughs, or other officers of the several parishes, tithings, or places, within such hundreds, &c. which constables, &c. shall cause such notice to be fixed on the doors of the churches or chapels belonging to their respective parishes, &c. or if any place being extraparochial, shall have no church or chapel belonging thereto, on the door of the church or chapel of some parish, tithing or place, adjoining: And all such militia men shall duly attend at the times and places of exercise so to be appointed: And if any militia man (not labouring under any infirmity incapacitating him) shall not appear at such times and places so appointed in such notice, every such militia man, being convicted thereof on oath, before one justice of the peace, shall forfeit and pay 20*l.* which not being immediately paid the said justice shall, by warrant, commit such militia man to the common county gaol, without bail or mainprize, for six months, or until he shall have paid the said penalty, *sect. 103.*

Notice of the times and places of exercise to be sent to high constables to be forwarded to the petty constables, &c. who shall affix such notice on church doors, &c.

Penalty on militia men not appearing at annual exercise.

53. The captain of each company of militia is to keep in his own custody, or leave and deposit with the several serjeants belonging to his company, or with such persons as the said captain shall appoint for that purpose, the arms, cloaths and accoutrements, provided for his company; and the churchwardens of every parish or place where the said arms, &c. are so deposited, to provide chests or for that purpose.

How the arms, cloaths and accoutrements of the militia shall be kept.

Churchwardens to provide chests or for that purpose.

or one of them is to provide, at the expence of such parish place, a chest, in which such captain, serjeant, or other person so appointed as aforesaid, shall keep the said arms in some part of his house, under lock and key, and another chest, which he shall keep, under lock and key, the said cloaths and accoutrements, *sect. 104.*

Militia officers and men not to be punished for absence whilst going to vote for member of parliament.

Constables, &c. to be aiding and assisting in execution of the act.

How the militia shall be drawn out and embodied in case of actual invasion or rebellion.

The duty of chief constables, and other peace and parish officers herein.

Penalty on militia men not appearing and marching, when ordered.

54. No officer of the militia, or private militia man shall be liable to any penalty or punishment on account of absence, during the time of his going to, or returning from, voting at an election of a member of parliament, *sect. 111.*

55. All chief constables, petty constables, tithingmen, headboroughs, and other officers of hundreds, rapes, laths, wapentakes, parishes, tithings, places, within *England and Wales*, are to be aiding and assisting to the king's lieutenants, and their deputy-lieutenants, and to the justices of the peace, and to any of them, and to all to whom any power or authority is given by this act in the execution thereof, *sect. 115.*

56. In case of actual invasion, or upon imminent danger thereof, or in case of rebellion, the king (having first communicated the occasion to parliament if then sitting, or declared the same in council, and notified it by proclamation if no parliament be then sitting) may order his lieutenants, or on their death or removal, or in their absence from their respective counties, ridings, or places, any three or more deputy-lieutenants, with a convenient speed, to draw out and embody all the regiments or battalions of militia of their respective counties, &c. already raised and not yet embodied, or by this act appointed to be raised and trained, or so many of them as the king shall judge necessary: And the king's lieutenants of every such county, &c. or in his absence from his county, &c. or on his death, or removal, any three or more deputy lieutenants shall issue orders to the chief constables or other officers of hundreds, &c. with directions to forward the same to the constables and other officers of parishes, &c. within their respective divisions; and such constables and other officers are upon receipt thereof, forthwith to give, or leave notice in writing, or cause such notice to be given to the several militia men, or left at the usual places of their abodes, within their respective parishes, tithings, or places, to attend at the time and place mentioned in such order: And any militia man so ordered to be drawn out and embodied, (not labouring under any infirmity incapacitating him to serve as a militia man) shall not appear and march in pursuance of such order, every such man on conviction thereof on oath before two or more justices, shall forfeit and pay 40 *l.* which not being immediately paid, the said justices shall, by warrant, commit such militia man to the common gaol of the county, riding, or place where so convicted, without bail or mainprize for twelve months, or till the penalty be paid. And persons harbouring

or concealing any militia man, not attending when ordered out into actual service, knowing him to be a militia man, shall, on conviction thereof, on oath, before any justice, forfeit and pay, for every such offence the sum of 5*l*. to be levied by distress and sale, by warrant of such justice, rendering the overplus (if any) after deducting the said penalty, and charges of the distress and sale, to the party; and for want of sufficient distress, such justice is to commit the offender to the house of correction for six months, or cause him to be publicly whipped at the discretion of the justice, *sect.* 116.

Penalty on persons harbouring and concealing militia men ordered out into actual service.

57. When the militia shall be called out to be trained and exercised, any justice of the peace of any county, riding or place, being duly thereunto required by an order from the lord lieutenant, or from any deputy lieutenant of the county, or from the colonel, or other chief commission officer upon the place, of any regiment, company, or detachment of militia, may issue out his warrant, under his hand, to the chief constables of hundreds, &c. or to the constables, tithingmen, headboroughs, and other officers of the parishes, tithings or places, from, through, near, or to which any such regiment, company or detachment shall be ordered to march, requiring them to make such provision for carriages of the arms, cloaths, accoutrements, powder, match, bullets, or other warlike materials, with able men to drive such carriages, as are mentioned in such order: But in case such sufficient carriages and men cannot be provided within any such county, riding, hundred, rape, lath, wapentake, division, parish, tithing, or place, then the next justice or justices shall, on such order being shewn to him or them, issue warrants to the chief constables, constables, tithingmen, headboroughs, or other such officers of the next county, riding, hundred, &c. for the purposes aforesaid, to make up such deficiency of carriages: And such lieutenant, deputy-lieutenant, colonel, or other chief commission-officer upon the place, who, by virtue of the said justices warrant, shall demand such carriages of such chief constable, or other officer, shall pay down in hand to the chief constable, or other officer, for the use of the person who shall provide such carriages and men, 1*s.* for every mile any waggon with five horses shall travel, and 1*s.* for every mile any wain with six oxen, or with four oxen and two horses shall travel, and 9*d.* for every mile any cart with four horses shall travel; and so in proportion for carriages drawn by a less number of horses or oxen; for which sums so received, the said chief constable or other officer is to give a receipt in writing to the person paying the same; and such chief constable or other officer, shall order or appoint such person or persons having carriages within their respective hundreds, &c. to provide and furnish such carriages and men according to the warrant aforesaid; which persons are required by this act to provide

Carriages to be provided for the militia when called out to annual exercise.

The duty of constables and other officers herein.

Penalty on constables, &c. neglecting their duty, and persons refusing to provide carriages.

provide and furnish the same accordingly for one day's journey and no more. And in case the chief constables, &c. shall be at any charges for such carriages over and above what is so received by them as aforesaid, the overplus shall be born by each county riding, or place, where such additional expence shall be incurred, and be repaid to them *gratis* by the treasurer of such county, &c. out of the publick stock, *sect. 123.* And any such chief constable, constable, or other officer, wilfully neglecting or refusing to execute any such warrant; or any person appointed by such chief constable, constable, or other officer, to provide or furnish any such carriage or man, wilfully neglecting or refusing to provide the same, shall forfeit a sum not exceeding 40*s.* nor less than 20*s.* to the use of the poor of the parish, &c. where the offence shall be committed; which offences are to be heard and determined by two justices of the county, &c. and to be levied by warrant under their hands and seals, by distress and sale, rendering the overplus (if any) on demand, after deducting the charges of such distress and sale, to such offender *sect. 124.*

The militia not to be sent out of Great Britain.

General manner of levying fines, penalties and forfeitures;

and application thereof.

58. Neither the militia of this kingdom, nor any corps, detachment or draught thereof shall on any account, be transported out of the island of *Great Britain*, *sect. 125.*

59. All fines, penalties, and forfeitures by this act imposed, the manner of recovery whereof is not in this act particularly provided for, shall, on proof upon oath of the offence before any justice of the peace, of the county, riding, or place, where the offence shall be committed, be levied by distress and sale of the offender's goods and chattels by warrant under the hand and seal of such justice, rendering the overplus (if any) on demand, to the party offending, after deducting the charges of such distress and sale; and where sufficient distress cannot be had, such justice is to commit the offender to the common gaol of the county, riding, or place, where the offence shall have been committed, for any time not exceeding three months. And all fines, penalties and forfeitures, by this act imposed, the application whereof is not otherwise particularly provided for, shall be paid to the clerk of the regiment or battalion, and made a common stock; and the said clerk shall account for the same, as it shall arise, to the colonel or commanding officer of the regiment or battalion, who shall cause butts to be erected in some convenient place or places, and shall direct the clerk of the regiment to buy and provide, with some part of the money, a proper quantity of gunpowder and ball, to be used at proper times by the militia men in shooting at marks; and to apply such other part thereof as he shall think reasonable, in some prize or prizes, to be given to such militia man or men as shall, by the commanding officer then present, be adjudged the best marksman or

marksmen.

marksmen, and to apply the residue thereof to other contingencies relating to the regiment or battalion, *sect.* 128.

60. Persons committed to the house of correction by this act, shall during such commitment be kept to hard labour in such house of correction, *sect.* 129.

61. In all cases where lord lieutenants, deputy lieutenants, or justices, are by this act, to examine, hear, and determine, all witnesses are to be examined on oath, which oath such lieutenants, deputy-lieutenant, and justices, or one of them, are empowered to administer, *sect.* 130.

62. No order or conviction made by his majesty's lieutenants, and by any three or more deputy-lieutenants, or by any two deputy-lieutenants, together with any one justice of the peace, or by any one deputy-lieutenant together with any two justices of the peace, or by any justice or justices of the peace by virtue of this act, shall be removed by *certiorari* out of the county, &c. wherein such order was made, into any court; and no writs of *certiorari* shall supersede execution, or any proceedings on any such order, but execution, and other proceedings shall and may be had and made thereupon, notwithstanding any such writ or allowance thereof, *sect.* 131.

63. Where any parish shall lie in more counties or ridings than one, the inhabitants of such parish shall serve in the militia of that county where the parish church is situated; and such parish shall be deemed as a part of that county, and shall be subject to the jurisdiction and authority of the deputy lieutenants, justices of the peace, and other officers, of that county or riding, to all the intents and purposes of this act, *sect.* 132.

64. The lieutenancy of the city of London shall continue to list and levy the train bands and auxiliaries of the said city as heretofore, *sect.* 140. And particular powers are given to the lord-warden of the stannaries with respect to the tanners in Devonshire and Cornwall, by *sect.* 139.—to the constable of the Tower with respect to the militia of the Tower-Hamlets, by *sect.* 141 and 142;—and to the lord-warden of the cinque-ports, and his lieutenant, within the said ports, and the members thereof in relation to the militia thereof, by *sect.* 143. And special directions are given in respect to the town of Berwick upon Tweed, by *sect.* 126.—the Isle of Wight, by *sect.* 127.—the constabulary of Craike in the North-riding of Yorkshire, by *sect.* 133.—the parish of Maker, in Cornwall, by *sect.* 134.—the town and parish of Wokingham, in Berkshire, by *sect.* 135.—the township of Filey in Yorkshire, by *sect.* 136.—the inhabitants of Threapwood, in Flintshire, by *sect.* 137.—and the inhabitants of the parish of St. Martin, called Stamford-Baron, in the suburbs of Stamford, by *sect.* 138.

65. Nothing in this act contained shall vacate any thing already done in pursuance of former acts relating to the militia, or prevent the completing any proceedings already commenced in

Persons committed to the house of correction to be kept to hard labour.

All examinations by lord-lieutenants and deputies to be on oath.

No order or conviction to be removed by *certiorari*.

The inhabitants of a parish lying in more counties than one, to serve in the county where the parish church stands.

Exceptions of particular places.

This act not to vacate proceedings on former acts.

in pursuance of such acts, *sect.* 145. And where, in pursuance of former acts the militia has been raised, and precepts issued for returning lists, and proceedings had thereon, the deputy lieutenants and justices are to proceed as those acts direct, in execution of all matters and things subsequent to such precept and the lists returned or to be returned thereon; and to levy the fines and penalties incurred on that account, as those laws direct, *sect.* 146.

Limitation of
actions,

66. All suits and actions, brought for any thing done in pursuance of this act, shall be commenced within six calendar months after the fact committed, and not afterwards; and shall be laid in the county where they arise, and not elsewhere; and the defendants in such suits or actions may plead the general issue, and give this act, and the special matter, in evidence. And if found for the defendant, or if the plaintiff be nonsuited or discontinue, after the defendant shall have appeared, or judgment be given against the plaintiff on demurrer, the defendant shall recover treble costs, and have the like remedy for the same as defendants have in other cases to recover costs by law, *sect.* 147.

and recovery of
treble costs by
defendants.

An Order to the High Constable, to require the petty Constables, &c. to make out, and return Lists of the Numbers of Men fit to serve in the Militia; with the Warrant to the petty Constables, &c. thereon.

67. N——shire. } To Y. Z. gentleman, chief constable of
F—— division within the said county.

WE A. lord M. his majesty's lieutenant, and B. C. and D. E. esqrs. two of the deputy-lieutenants of and in the said county [or if the lord-lieutenant be dead, removed, or absent, three or more deputy-lieutenants] at our general meeting for that purpose assembled, do hereby require you to issue out your warrants to the constable, titthingman, headborough, or other officer of each parish, titthing, or place, within your division, according to the form hereon indorsed. Given under our hands and seals the —— day of, &c.

The Warrant to be indorsed on the foregoing Order.

88. N——shire. } To the constable, &c. of ——
F—— division. }

BY virtue of an order from the lord-lieutenant and deputy-lieutenants [or deputy-lieutenants alone] in and for the said county, at their general meeting for that purpose assembled, unto me directed, you are hereby required, to make out a fair and true list, in writing, of all men usually, and at this time, dwelling within your constablewick, [parish, or tithing] between the ages of eighteen and forty-five years, distinguishing therein their respective ranks and occupations; and which of the said persons labour under any infirmities, incapacitating them from serving as militia men; and also which of them (if any) is a peer of this realm; or a person serving as a commission-officer, in any regiment, troop, or company in his majesty's other forces, or in any one of his majesty's castles or forts; or a non-commission officer, or private man, serving in any of his majesty's other forces; a commission-officer serving, or who has served four years in the militia; a member of either of the universities; a clergyman; a licensed teacher of any separate congregation; a constable, or other peace officer; an articled clerk, apprentice, seaman, or seafaring-man; a person mustered, trained, and doing duty in any of his majesty's docks for the service thereof; a person free of the company of watermen of the river Thames; or a poor man who has three children born in wedlock. Which list, so fairly and truly made as aforesaid, you are hereby required to return to the deputy-lieutenants and justices of the peace, for the said county, at their meeting for that purpose, to be held on the —— day of —— next ensuing the date hereof, at —— in the said county. And you are hereby further required, to affix a true copy of the said list, to be made as aforesaid, on the door of the church or chapel belonging to your respective parish, township, or place; and if such place, being extraparochial, hath no church or chapel belonging thereto, then on the door of the church or chapel of some parish or place thereto adjoining, on some Sunday morning, which shall be three days at least before the said —— day of —— . And also you are to affix notice in writing, at the bottom of the said list, of the day and place of the said meeting; and that all persons who shall think themselves aggrieved may then appeal, and that no appeal will be afterwards received. Herein fail you not. Given under my hand the —— day of —— &c.

Y. Z. chief constable of the said division.

An

An Order to the High Constable to give Notice to the petty Constables, &c. of the Number of Men appointed to serve in the Militia within each Parish, &c. and of the Time and Place of choosing them by Lot.

69. N——shire. } To Y. Z. gentleman, chief constable of
F—— division in the said county.

WE B. C. and D. E. esquires, deputy-lieutenants, and F. C. and H. I. esquires, justices of the peace in and for the said county, at our subdivision meeting assembled for proportioning the number of private militia men to serve for each parish, tithing and place within the said division, do hereby require you to give notice to the constable, tithingman, headborough, or other officer of every such parish, tithing or place, within your said division, of the number of men appointed by us to serve for such respective parish, tithing, or place, according to the list hereunto annexed; and that at our next subdivision meeting, for causing the said men to be chosen by lot to serve in the said militia, will be at —— in the said county, on the —— day of —— now next ensuing. Given under our hands and seals, the —— day of —— &c.

An Order to the High Constable, to require the petty Constables, &c. to give Notice to the Persons chosen by Lot to appear, and take the Oath, and be inrolled; with the Warrant to the petty Constables, &c. thereon.

70. N——shire. } To Y. Z. gentleman, chief constable of
F—— division, within the said county.

WE B. C. and D. E. esquires, deputy-lieutenants, and F. C. and H. I. esquires, justices of the peace, in and for the said county, at our subdivision meeting for that purpose assembled do hereby order and require you, forthwith, to issue out your warrants to the constable, tithingman, headborough, and other officer of each parish, tithing, or place within your said division, according to the form hereon indorsed. Given under our hands and seals, the —— day of —— in the year of our lord, &c.

The Warrant to be indorsed on the above Order.

1. N—shire. } To the constable, &c. of —
F—division. }

By virtue of an order from the deputy-licutenants, and justices of the peace in and for the said county, at their subdivision meeting for that purpose assembled, you are hereby directed and required to give notice, severally and respectively, to G. H. I. K. &c. inhabitants within your constablewick [parish, or tithing] chosen by lot at the said meeting to serve in the militia of the said county, that each of them do appear at — in the said county, on the — day of — now next ensuing, then and there take the oath in that behalf required by law, and to be inrolled in the militia of the said county, as a private man, for the space of three years; or otherwise to provide a fit person, (to be approved by the deputy-licutenants and justices of the peace that shall then and there met) who shall take the said oath, and sign his consent on the roll, to be then and there prepared for that purpose to serve as his substitute during the said term. Which notice you are to give to each of the said persons aforesaid, severally and respectively, at least seven days before the — day of — next ensuing. And be you then there to certify what you shall have done in the premisses. Herein fail you not. Given under my hand the — day of — in the year, &c.

Y. Z. chief constable of the said division.

2. The Form of the Notice pursuant to the above Warrant, to be left at the dwelling House, where Notice cannot be personally given.

G. H.

Notice is hereby given unto you, that you are chosen by lot to serve in the militia of this county of N. and that you are to appear at — in the said county, on the — day of — next, before the deputy-licutenants and justices of the peace for the said county, that shall be then and there met, to take the oath in that behalf required, and to be inrolled to serve in the militia of the said county, as a private man, for the space of three years; or otherwise to provide a fit person, to be then and there approved by the said deputy-licutenants and justices, who shall take the said oath, and sign his consent, on the roll to be then and there prepared for that purpose, to serve as your substitute during the said term. Given under my hand the — day of — in the year, &c.

J. K. constable of —.

E e

The

The Form of a Warrant against a Person chosen by Lot to serve, for not appearing, or refusing to be sworn.

73. N——shire. } To the constable of ——.

W Hereas complaint and information upon oath hath been made unto me A. B. esquire, one of his Majesty's justices of the peace in and for the said county, that G. H. late of —— the county aforesaid, yeoman, (not being one of the people called quakers) hath been duly chosen by lot to serve as a private militia man in the militia of the said county, and hath had due notice to appear before the deputy-lieutenants, and justices of the peace, in and for the said county, at their subdivision meeting for that purpose met, to take the oath in that behalf required, and to be enrolled to serve in the said militia as a private militia man, for the space of three years; or to provide a fit person, to be approved by the said deputy-lieutenants and justices, met as aforesaid, to serve as his substitute; and that he the said G. H. hath neglected [or refused] to appear and take the said oath, and to serve in the said militia, and hath also neglected to provide any fit person to serve as his substitute; these are therefore to require you, forthwith, to summon the said G. H. to appear before me, at the house of —— in —— in the said county, on the —— day of —— at the hour of —— in the afternoon of the same day, to answer unto the said complaint, and to shew cause why the penalty of ten pounds should not be levied upon his goods and chattels for the said offence. Herein fail you not. Given under my hand and seal the —— day of —— &c.

A Warrant to distrain for the above-mentioned
Penalty of 10 l.

74. N——shire. } To the constable of ——

W Hereas G. H. late of —— in the county of N. yeoman (not being one of the people called quakers) is this day duly convicted upon oath before me A. B. esquire, one of his Majesty's justices of the peace in and for the said county, for that the said G. H. having been duly chosen, by lot, to serve as a private militia man in the militia of the said county, and after due notice given to him to appear before the deputy-lieutenants and justices of the peace in and for the said county, at their subdivision meeting for that purpose

pose met, to take the oath in that behalf required, and to be
 called to serve in the said militia as a private militia man, for
 the space of three years, or to provide a fit person, to be approved
 by the said deputy-lieutenants and justices met as aforesaid, to serve
 in his substitute, hath neglected [or refused] to appear and take the
 said oath, and serve in the said militia; and also hath neglected
 to provide any fit person as his substitute, whereby he the said G.
 hath forfeited the sum of ten pounds: These are therefore in his
 Majesty's name, to command you to levy the said sum, by distress of
 his goods and chattles of him the said G. H. and if, within the
 space of [four] days next after such distress by you taken, the said
 sum, together with reasonable charges of taking and keeping the
 said distress, shall not be paid, that then you do sell the said goods
 and chattles so by you distrained, and out of the money arising by
 the sale, that you do pay the said sum of ten pounds to the said
 deputy-lieutenants and justices as aforesaid, or to such person as
 they shall appoint to receive the same, for the providing of a substi-
 tute to serve for him the said G. H. and for the other purposes by
 the justices directed for the application thereof; rendering the overplus,
 (if any shall be) on demand, unto him the said G. H. the reason-
 able charges of taking, keeping, and selling the said distress being
 deducted. And if sufficient distress cannot be found of the
 goods and chattles of him the said G. H. whereon to levy the said
 sum of ten pounds, that then you certify the same to me, together
 with the return of this precept. Herein fail you not. Given un-
 der my hand and seal the ——— day of ——— in the year of
 our lord, &c.

The Constable's Return of the Want of Distress.

N ——— shire.

K. constable of ——— in the said county, maketh oath be-
 fore me A. B. esquire, one of his Majesty's justices of the
 peace for the said county, the ——— day of ——— in
 the year of our lord ——— that by virtue of my warrant to
 me directed, to levy the sum of ——— by distress and sale of
 the goods and chattles of G. H. late of ——— aforesaid, in
 the county aforesaid, yeoman, he the said constable hath made
 diligent search for such goods and chattles, and that he doth not
 find, nor can find, that the said G. H. hath goods and chattles
 sufficient to answer the said distress.

Before me
 A. B.

J. K.

A Commitment for want of Distress.

N——shire. { To the constable of —— in the said county, and to the keeper of the common gaol at A. in the said county.

76. **W** Hereas G. H. late of —— in the county aforesaid, yeoman, (not being one of the people called quakers) was on the —— day of —— duly convicted before me A. B. esquire, one of his Majesty's justices of the peace and for the said county, for that the said G. H. having been duly chosen by lot to serve as a private militia man in the militia of the said county, and after due notice given unto him to appear before the deputy lieutenants and justices of the peace in and for the said county, at their subdivision meeting for that purpose met, to take the oath in that behalf required, and to be inrolled to serve in the said militia as a private man, or to provide a fit person, to be approved by the said deputy lieutenants and justices of the peace met as aforesaid, to serve as his substitute, did neglect [or refuse] to appear, and take the said oath and serve in the said militia, and also did neglect, [or refuse] to provide any fit person to serve as his substitute, and thereupon did forfeit the sum of ten pounds; and whereas, on the —— day of ——, in the year aforesaid, I did issue my warrant to the constable of —— to levy the said sum of ten pounds by distress and sale of the goods and chattles of him the said G. H. and whereas it duly appears to me, as well on the oath of the said constable, as otherwise, that he, the said constable hath used his best endeavours to levy the said sum on the goods and chattles of the said G. H. as aforesaid, and that the goods and chattles of him the said G. H. are not sufficient to answer the said distress. These are therefore to command you, the constable of —— aforesaid, to apprehend the body of the said G. H. and him safely to convey to the common gaol at A. aforesaid, in the county aforesaid, and there deliver him to the keeper thereof, together with this precept. And I do hereby command you, the said keeper of the said common gaol, to receive into your custody, in the same common gaol, the said G. H. and him there safely to keep for the space of [not exceeding twelve months] and for so doing, this shall be your sufficient warrant. Given under my hand and seal, the —— day of —— the year of our lord, &c.

Warrant to distrain for Payment of a Quaker's Substitute.

Worcestershire. { A. B. esquire, deputy lieutenant, and C. D. and E. H. esquires, two of his Majesty's justices of the peace for the said county, to the high constable of ——— ward within the said county, and to the petty constables of ——— in the said county, and to each and every of them.

FOrasmuch as L. M. late of ——— aforesaid in the county aforesaid, yeoman, being one of the people called Quakers, hath been duly chosen by lot to serve in the militia of the said county; and, after due notice given unto him, hath neglected to appear, and to take the oath in that behalf required, and to serve in the said militia, and hath also neglected to provide any fit person to serve for him as his substitute; and whereas the said deputy lieutenant and justices have upon as reasonable terms as might be, namely, for the sum of ———, provided and hired W. X. a fit person, who hath taken the said oath, and subscribed his consent to serve in the said militia, for the space of three years, as the substitute of him the said L. M. We do therefore hereby require you to levy the said sum of ———, by distress and sale of the goods and chattels of him the said L. M. and to pay the same unto ———, for the use of him the said W. X. rendering the overplus (if any shall be) unto him the said L. M. after deducting the charges of the said distress and sale. Herein fail you not. Given under our hands and seals the ——— day of ——— in the year of our lord, &c.

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3. Against a constable for an escape, ————	94	10	
4. Against a constable for not raising hue and cry, ————	94	11	
5. For refusing to assist to take a felon, ————	94	12	
6. If of two parishes jointly, ————	58	120	
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